139-176
139-176

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1890.**

No. 143.

CARL STOCKMEYER, TESTAMENTARY EXECUTOR OF EDWARD F. STOCKMEYER, DECEASED, APPELLANT,

*vs.*

MRS. MARY G. TOBIN, WIDOW OF CHARLES P. McCAN, DECEASED, INDIVIDUALLY AND AS TUTRIX OF THE MINORS KATE ELIZABETH, FANNIE TOBIN, DAVID CHAMBERS, HESTER MARGARET, AND —— McCAN; HENRY GODBERRY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 4, 1887.

as it bears upon the question of the *bona fides* of Doane in getting the note. If the transaction as between these parties was legal and proper, then King cannot complain; it is not a defense to the note. He would have been in exactly the same position he now is, if Doane, instead of paying stock for the note, had paid Felt cash, and the company had issued direct to King of its own stock 100 shares.

Counsels' illustration, in the fifth part of their brief, and the conclusion drawn therefrom, would be well enough in some other case; but we submit it is hardly applicable to the one at bar. In the case supposed the company would receive no benefit whatever from the note; in the case at bar the company and all the stockholders did receive a benefit.

We have already said that Doane knew nothing of any "executory" contract between the company and King, that the stock was not to issue until the note was paid, and we cannot see how that would make any difference in the case if he did. This condition the company could waive, and they did so when they accepted money from Felt in place of the note, and, in effect, clothed him with its ownership. This was some time prior to the time of the transaction by which Doane became the owner of the note. The so-called executory contract was not then in existence. King was entitled to his stock when his note had been turned into cash and the company had received it.

We then submit, that Doane *purchased* the note *before* maturity, in the *ordinary course of business*, and that there is no evidence to show that he had any notice of the fraud claimed to have been practiced upon King by Felt. That these are all facts, so clearly appearing from the evidence, that there was nothing to submit to the jury, and that, therefore, the court was right in directing a verdict for the plaintiff and in denying the motion for a new trial. The judgment appealed from should be affirmed.

W. E. HALE,
Attorney for Plaintiff Doane.

JOHN M. MILLER,
Of Counsel.

139-176
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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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INDEX.


| | Original. | Print. |
|---|---|---|
| Caption | *a* | 1 |
| Bill of complaint | 1 | 1 |
| Appearance of McCan and Le Bourgeois | 18 | 10 |
| Answer of C. P. McCan | 19 | 10 |
| Replication | 27 | 14 |
| Bill of revivor | 28 | 15 |
| Appearance of McCan's representatives | 46 | 24 |
| Order *pro confesso* | 47 | 24 |
| Hearing and submission | 48 | 25 |
| Evidence for complainant | 50 | 26 |
| Agreement as to taking evidence | 50 | 26 |
| Exhibits offered | 51 | 26 |
| Deposition of Henry Godbery | 53 | 27 |
| Exhibit A—Act of sale | 68 | 35 |
| B—Act of pledge | 77 | 39 |


---

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 22, 1890.

| | Original. | Print. |
|---|---|---|
| Exhibit C—Act of pledge | 80 | 41 |
| D—Mortgage and crop lien | 84 | 43 |
| E—Sheriff's deed | 97 | 50 |
| F—Petition and protest | 104 | 53 |
| G—Protest of Carl Stockmeyer | 111 | 56 |
| H—Note | 115 | 59 |
| J—Note | 116 | 59 |
| K—Petition, &c., interdiction of Edw. F. Stockmeyer | 118 | 60 |
| Deposition of Carl Stockmeyer | 127 | 64 |
| George Godbery | 134 | 68 |
| Exhibit P—Transcript in case No. 197, from twenty-sixth judicial district court, parish of St. John the Baptist, entitled Charles P. McCan *vs.* Henry Godbery and George Godbery | 143 | 73 |
| Petition | 143 | 73 |
| Order for process | 147 | 74 |
| Waiver of notice | 147 | 74 |
| Promissory notes | 147 | 75 |
| Act of mortgage | 149 | 76 |
| Notices of demand of payment, &c. | 163 | 83 |
| Third opposition of Adelaid Millet | 166 | 85 |
| Order on petition of third opponent | 170 | 87 |
| Sheriff's advertisement | 171 | 87 |
| Citation | 174 | 89 |
| Petition of Henry and George Godbery | 176 | 89 |
| Order on petition, &c. | 181 | 92 |
| Answer of McCan to third opposition | 182 | 93 |
| Writ of seizure and sale, &c. | 183 | 93 |
| Clerk's certificate | 186 | 95 |
| Exhibit R—Sheriff's deed to McCan | 187 | 95 |
| Deposition of Carl Stockmeyer (recalled) | 194 | 99 |
| Frederick Muller | 195 | 99 |
| J. F. Schroeder | 202 | 103 |
| Dr. Edward T. Shepard | 212 | 109 |
| Document R—Statement of Dr. Shepard as to Edward F. Stockmeyer | 226 | 115 |
| Deposition of Dr. Frederick Loeber | 230 | 117 |
| Dr. A. W. Smythe | 235 | 120 |
| Adolph Woeste | 243 | 124 |
| E. W. Huntington | 247 | 126 |
| Alfred Goldthwaite | 251 | 128 |
| Exhibit W—Statement of account of H. and G. Godbery with Edward F. Stockmeyer & Co. | 252 | 128 |
| Evidence for defendants | 253 | 129 |
| Exhibit L—Letter of H. and G. Godbery to C. P. McCan, September 27, 1884 | 253 | 129 |
| M—Agreement of George and Henry Godbery | 253 | 129 |
| N—Agreement of Edward F. Stockmeyer & Co. *et al.* | 254 | 129 |
| Deposition of Andrew Hero, Jr. | 255 | 130 |
| Exhibit McCan No. 2—Draft, January 29, 1884 | 265 | 135 |
| No. 1—Check, January 29, 1884 | 265 | 135 |
| No. 3—Account, Godberys with McCan | 265 | 135 |
| Decree | 269 | 138 |

| | Original. | Print. |
|---|---|---|
| Petition for appeal | 270 | 139 |
| Order granting appeal | 271 | 139 |
| Bond for appeal | 271 | 139 |
| Certificates to record | 274 | 140 |
| Citation to Mary G. Tobin, widow, &c. | 275 | 141 |
| Henry Godberry | 277 | 142 |
| George Godberry | 279 | 142 |
| Laura Godberry | 281 | 143 |
| Noelie Godberry | 283 | 144 |
| Edward C. Le Bourgeois | 285 | 144 |

a UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

EDWARD F. STOCKMEYER, by His Curator, Appellant,
*vs.*
CHARLES P. MCCAN *et als.*, Appellees. } No. 11224.

Alfred Goldthwaite, E. W. Huntington, and James Legendre, Esquires, solicitors for complainant.

Rouse & Grant, Esquires, solicitors for defendants.

Appeal returnable to the Supreme Court of the United States, at the city of Washington, D. C., on the second Monday of October, A. D. 1887.

*Transcript of Appeal.*

1 Circuit Court of the United States, Eastern District of Louisiana.

EDWARD F. STOCKMEYER, by His Curator,
*vs.*
CHARLES P. MCCAN *et als.* } In Equity. No. 11224.

Bill of complaint. Filed Jan'y 27, 1886.

To the hon. the judges of the circuit court for the eastern district of Louisiana:

Edward F. Stockmeyer, an interdict and a subject of the German Empire, residing in New Orleans, by his curator, Carl Stockmeyer, also a subject of the German Empire residing in New Orleans, brings this his bill of complaint against Charles P. McCan, Henry Godberry, George Godberry, Laura Godberry, Noelie Godberry, and Eduard F. Le Bourgeois, citizens of the State of Louisiana, residing in this district.

And thereupon your orator complains and says that by proper proceedings had in the civil district court for the parish of Orleans the said Edward F. Stockmeyer was adjudged and decreed to be interdicted, and your orator, Carl Stockmeyer, was appointed
2 and did qualify and is now curator of said interdict, as will fully appear from the record of said cause, to be produced on the trial of this case.

That heretofore, on or about the 7th day of February, 1881, by public act before Nicholas B. Trist, a notary public in and for the parish of Orleans, the defendants, Laura Godberry and Noelie Godberry, did pledge to Eduard F. Stockmeyer two several promissory notes made by Henry Godberry and George Godberry to their own order and by them endorsed, dated February 20th, 1880, each for the sum of eight thousand seven hundred and fifty dollars, payable one year after date, with interest, at the rate of six per cent. per annum, from date until paid, with privilege to makers of extending

he said notes from year to year for four years upon payment of interest, and which notes were secured by mortgage and vendor's privilege on a plantation known as "the Angelina plantation," in the parish of Saint John the Baptist, as will more fully appear by certified copy of the act of mortgage and vendor's lien passed before N. B. Trist, a notary public in and for the parish of Orleans, hereto attached, made part hereof, and marked Exhibit A.

The act of pledge from said Laura Godberry and Noelie Godberry will more fully appear from a duly certified copy hereto attached, marked Exhibit B, and made a part of this bill.

Your orator, further complaining, says that by public act before Andrew Hero, Jr., a notary public in and for the parish of Orleans,

3 on the 25th day of January, 1884, Laura Godberry and Noelie Godberry, to secure an indebtedness from Henry Godberry and George Godberry to Edward F. Stockmeyer in the sum of thirty-two thousand dollars, with interest, at eight per cent. per annum, from the 24th day of February, 1884, until paid, and attorney's fees at 5 per cent. on amount sued for, did pledge to said Edward F. Stockmeyer two certain promissory notes for the sum of eight thousand seven hundred and fifty dollars each, drawn by Henry and George Godberry to their own order and by them endorsed, dated at New Orleans the 20th day of February, 1881, and both payable one year after date, with interest, at 6 per cent. per annum, from date, said notes being marked 3 and 4 and payment thereof being secured by special mortgage and vendor's privilege, duly recorded, upon the Angelina plantation, as will appear by the act of mortgage, a duly certified copy of which is hereto attached and marked Exhibit A.

By the terms of said act of pledge it was agreed to by and between the said Laura Godberry and Noelie Godberry and the said Edward F. Stockmeyer that in the event of the failure of Henry Godberry and George Godberry to pay the indebtedness of thirty-two thousand dollars, and interest and costs added, on or before the 25th day of January, 1885, that said Stockmeyer, his heirs or assigns, were duly authorized to take such legal proceedings as he might deem necessary to enforce the payment of the notes therein pledged and to appropriate the proceeds of said sale to the payment of any amount

4 that might then be due and owing unto him, Stockmeyer, from said Henry and George Godberry on account of said Angelina plantation. The interest was paid to February 20th, 1884, and the payment of said notes was postponed until 25th day of January, 1885; all of which will more fully appear by reference to the duly certified copy of the act of pledge, passed before Andrew Hero, Jr., a notary public in and for the parish of Orleans, on the 25th day of January, 1884, made a part of this bill, attached hereto, and marked Exhibit C.

Your orator, complaining, says that the land and property embraced in the special mortgage and vendor's privilege to secure the notes pledged to Edward F. Stockmeyer were—

A certain tract of land established as a sugar plantation, situated in the parish of Saint John the Baptist, on the left bank of the Mis-

sissippi river, and about forty-eight miles above the city of New Orleans, and composed of the following-described tracts, to wit:

1°. A tract measuring seventeen arpents, more or less, front on the said river by forty arpents in depth between opening lines, the upper fourteen arpents thereof having a double concession, bounded on the upper side by the tract which shall be hereinafter secondly described and on the lower line by the property formerly belonging to Esteve Marqueze.

2°. Another tract, measuring about one arpent and a half front on said river by forty arpents in depth between opening lines, with a double concession, bounded above by the tract hereinafter fourthly described and below by the one herein firstly described.

3°. Another tract, measuring one arpent front to the river
5 by forty arpents in depth, with a double concession, bounded above by the property of Eugene Chenet and below by the tract hereinafter fourthly described; and

4°. Another tract, measuring one-half arpent front to the river by forty arpents in depth, with a double concession, bounded above by the tract herein thirdly described and below by the one herein secondly described.

And also the following back lands, to wit: Lot or section (97) ninety-seven, in township (11) eleven, east of the Mississippi river, of range six (6) east, in the district of land subject to sale at New Orleans, containing forty-five acres, together with all the buildings and improvements on said tracts of land, forming one plantation, known as the "Angelina plantation," the machinery, engines, apparatus, carts, wagons, tools, implements of husbandry, mules and other live stock, corn and fodder, the growing crops, and everything to said plantation belonging or appertaining, without exception or reservation.

And your orator, further complaining, says that on the said 25th day of January, 1884, there was made and signed in the city of New Orleans what purports to be a special act of mortgage and crop lien by public act before Andrew Hero, Jr., a notary public in and for the parish of Orleans. The said act was signed by Henry Godberry, George Godberry, Laura Godberry, Noelie Godberry, Edward F. Stockmeyer, and Charles P. McCan. A duly certified copy of said act is hereto attached, made part hereof for reference, and marked Exhibit D.

6 Your orator shows that by the terms of said act certain notes therein specified for the sum of twenty-five thousand dollars were made *in solido* by the said Henry Godberry and George Godberry to their order and by them endorsed, divided into sums of five thousand dollars each and payable at the New Orleans National Bank on the 15th, 20th, and 27th days of December, 1884, and on the 5th and 15th days of January, 1885, respectively, with six per cent. interest per annum after maturity; that said notes were secured or attempted to be secured by special mortgage and crop lien on property in said act enumerated.

Your orator, complaining, shows that upon a default in the payment of one or more of the above-described notes the said Charles

P. McCan, the holder and owner thereof, did proceed by executory process in the twenty-sixth judicial district court, parish of Saint John the Baptist, in suit No. 197 on the docket of said court, in the matter of Charles P. McCan *vs.* Henry Godberry and George Godberry, to seize and sell the following-described property, to wit:

"All and singular that certain tract of land or plantation, together with all the buildings and improvements thereon, including the sugar-house, machinery, engines, boiler, fixtures, apparatus, and appurtenances thereof, mules, carts, wagons, aratory implements, and all articles of personal property thereto attached or used in the cultivation thereof, situated, lying, and being in the parish of Saint John the Baptist, in this State, on the left bank of the Mis-
7 sissippi river, at about forty-eight miles above the city of New Orleans, and including, more or less, twenty arpents front on the Mississippi river by forty arpents in depth, with a double concession between opening lines, and bounded below by property now or formerly belonging unto Esteve Marqueze and above by the property now or formerly belonging to E. Chenet.

Also those tracts of land or parcels of land situated in said parish of St. John the Baptist, lying or being in the rear of the above-described tract of land and designated and described as follows: Lot or section No. 97, in township No. 11 (east of Mississippi river), of range No. 6 east, containing forty-five acres."

That at said sale on the 7th day of March, 1885, the above-described property, with all its appurtenances, was adjudicated to Charles P. McCan for the price of fifteen thousand dollars cash, and deed was made to the purchaser by one John Webre, sheriff of the parish of St. John the Baptist.

Your orator, further complaining, says that the defendant, Charles P. McCan, did thereafter, under said sheriff's deed, enter into possession of said property, movable and immovable, its use and enjoyment, and that after he came into possession of the same the said McCan sold the mules and machinery in the sugar-house on the said plantation for a sum approximating ten thousand dollars, as your orator is informed and believes and so charges.

And, further, upon information and belief, that the said McCan did lease the said plantation for the year 1885 to Edward Le Bourgeois for the sum of five thousand dollars, and which sum
8 has been collected by said Charles P. McCan, and has again leased the said plantation to the said Edward F. Le Bourgeois for two years from Jan'y 1, 1886, for the sum of ten thousand dollars, and that the said Le Bourgeois has possession of the same and holds as the lessee and tenant of said Charles P. McCan; and, furthermore, that the title of said Charles P. McCan rests solely on the sheriff's deed above referred to and hereto attached, made part hereof, marked Exhibit E; which said title is based upon the adjudication made to Charles P. McCan of the property on the 7th day of March, 1885.

Now, your orator avers that said sale was irregular, illegal, and defective and is void, and shows to this hon. court that before the said sale was made a protest was made by the defendants in said

suit No. 197 on the docket of the district court for the parish of St. John the Baptist, twenty-sixth judicial district, and said protest was filed in the record of said suit on the 5th day of March, 1885, as will appear by a duly certified copy of said petition and protest hereto attached, made part of this bill, and marked Exhibit F.

That upon presentation of the petition and protest to the judge presiding, the Hon. Henry L. Daffell, the following order was made: "Upon reading the foregoing petition and considering articles 666 and 676 of the Code of Practice, let the sheriff of the parish of St. John the Baptist be, and he is hereby, directed and instructed to sell the property described in the foregoing petition in the order and manner set forth therein; and let the same be sold
9 separately, as above set forth and prayed in said petition; the plantation to be sold first at the court-house; and the other articles on the plantation as prayed for." Said order was made on the 4th day of March, 1885, and was promptly notified to the sheriff of said parish. In addition thereto, your orator, Carl Stockmeyer, as curator of Edward F. Stockmeyer, did, through his attorneys, St. Maurice Berault and James Legendre, notify the said Charles P. McCan, plaintiff and seizing creditor in said suit No. 197, and John Webre, the sheriff of the parish of Saint John the Baptist, of his, said Carl Stockmeyer's, protest, as curator of Edward F. Stockmeyer, against the sale of the property seized in the executory proceedings above numbered being made without all of said property being duly and separately appraised according to law, and against said property being offered for sale and adjudication in block to any purchaser.

And in the said protest notified to said McCan and said Sheriff Webre and filed in the record of said suit No. 197 did fully and particularly set forth his claim and his right to consideration; all of which will more fully appear by reference to the protest and notice, a certified copy of which is hereto attached, marked Exhibit G, and made a part of this bill.

But your orator avers that in utter disregard of his rights as curator, and of the notice given by your orator's said attorneys, as well as of the petition and protest filed by defendants, Henry Godberry and George Godberry, in said suit No. 197, and of the order of the judge of said court, and in disobedience thereof, the said Charles P. McCan, personally or acting through his agent
10 and attorney, and the said John Webre, sheriff of the parish of St. John the Baptist, did sell all of said property, at the court-house door, in block, without any appraisement having been made or such appraisement as the law required, and not in the form and manner that such sales are required to be made by the law of Louisiana; that by such conduct and illegal proceeding the sale did not realize a fair value, and persons who would have been present at said sale and would have bid upon said property did not attend, and were prevented from bidding on account of the illegal method of sale resorted to.

And your orator, further complaining, says that the sale was made upon executory process sued out on the alleged act of special mort-

gage and crop lien heretofore referred to and marked Exhibit D. Among others, the said act contains covenants attempting to bind the defendants in suit No. 197, above referred to, Henry Godberry and George Godberry, and through them all subsequent parties having any interest therein, not to require any appraisement of the property enumerated in said act in case of seizure and sale, and in advance dispensing with an appraisement, and waived all legal delays and appeals and writs of error and right of appeal and authorized the holder of any of the notes to enter judgment before any court of competent jurisdiction, without any citation or previous notice of any kind, on a mere production of an authentic copy of the said act for the whole or part of said indebtedness, attorney's fees, costs, charges, expenses, &c., provided that execution should be
11 stayed until maturity of the notes sued on; and, further, the said Henry Godberry and George Godberry in said act stipulated that in case a forced sale should become necessary from any cause whatsoever, whether from failure or inability to pay or otherwise, said Henry Godberry and George Godberry did waive and acknowledge legal service of notice to pay, notice of seizure, notice to appoint an appraiser and to subdivide, as well as all legal delays, and consented to the immediate execution of any judgment which might be entered, and further promising that no injunction or process of law tending to delay a sale should be resorted to by them or by any one holding under them and expressly renouncing such right or privilege; and Henry and George Godberry further agreed and consented that any and all laws of this State pertaining to privileges for supplies furnished or money advanced and used for the purchase of necessary supplies and the payment of necessary expenses, laborers, etc., to carry on a farm or plantation shall and do hereby expressly refer and have full force and effect, and did obligate themselves to ship and consign the entire crop of sugar and molasses made and produced and gathered on the Angelina plantation during the year 1884 to the said mortgagee, or his representatives or assigns were authorized at once to sequester the said crops or the proceeds thereof, in whomsoever hands the same might be, regardless of any sale or transfer thereof, and to ship the same, if in kind, to said McCan, who was empowered to sell the same at the current market prices and to hold the net proceeds, after deduction of all costs, charges, expenses, commissions, and attorney's fees, which net proceeds
12 should stand in lieu of the property sequestered; and did further relinquish their right to bond and the delay granted therefor, and consented that the sequestration should stand in the place of the release bond required by law, and that sequestration should issue and judgment be entered up at the option of the holder of said notes or of either of them, without notice or citation of any kind, expressly confessing judgment and waiving all notices and citations required by law and consenting that no appeal should be taken from any of the proceedings or from the judgment; and, furthermore, waived all exceptions to jurisdiction and did acknowledge and recognize jurisdiction of the court before which process

might be sued out for the purpose of subjecting such crops to the rights of the holders or holder of such notes or open account and confess judgment therefor so as to hold the said crops subject thereto; and, furthermore, did agree that said McCan should charge and allow two and one-half per cent. commission and one-half per cent. brokerage, besides eight per cent. interest per annum; and, further, authorized said McCan to charge two and one-half per cent. commission and customary brokerage for accepting, endorsing, buying, and selling; and, moreover, expressly waive and relinquish in favor of said McCan or any future holder or holders of said notes or either of them all rights and privileges of going into bankruptcy or of using the insolvent or respite or bankrupt laws of the United States, of the State, or of any other State or country in which they may hereafter reside until the whole amount of the stipulated
13 indebtedness shall have been paid, unless with the consent of the said mortgagee or of such person and persons as may be the future owner or owners of said notes.

Your orator avers that the said stipulations in said act, marked Exhibit D, are illegal and void and cannot bind Henry Godberry and George Godberry and through them any creditor or junior mortgagee, and particularly your orator or the said interdict, if he be adjudged to have lawfully signed said paper, which your orator denies.

Your orator avers that the defendants, Laura and Noelie Godberry, at the date of said act, to wit, the 25th day of January, 1884, were not the holders and owners of the two certain promissory notes for the sum of eighty-seven hundred and fifty dollars each, marked 3 and 4, and drawn by Henry Godberry and George Godberry to their order and by them endorsed, dated at New Orleans, February 20th, 1880, but that said notes had been pledged to E. F. Stockmeyer first by act marked Exhibit B and again by act marked Exhibit C, and that said Edward F. Stockmeyer held a special property in said notes to secure the indebtedness due to him.

Your orator, further complaining, says that the act of 25th January, 1884, marked Exhibit D, does not in terms subordinate the pledge of Edward F. Stockmeyer to the claim and notes of Charles P. McCan, nor can such an interpretation be made of said act except by adding to it or varying its terms, and your orator avers that such was not the intention at the time said act was passed.

Plaintiff avers that there was no consideration given to or hoped for by said Edward F. Stockmeyer to induce him to part with
14 such valuable security or to make it probable that he, Edward F. Stockmeyer, ever intended to subordinate his right of pledge set forth in Exhibits B and C or either of them to the special mortgage and crop lien of Charles P. McCan, nor does any consideration appear on the face of the papers.

Your orator further shows that at that time, to wit, the 25th of January, 1884, the said Edward F. Stockmeyer was losing and to a large extent had lost his capacity to attend to business and to manage his affairs; that his mind was seriously impaired so as to affect

his understanding and judgment, and continued until in the month of November, 1884; on the eleventh day of said month said Edward F. Stockmeyer was judicially interdicted, but on or about the 20th day of February, 1884, previous thereto, was placed in an asylum.

That said act was not the expression of a sound mind and is illegal and void and not binding on said Edward F. Stockmeyer, his heirs or assigns, and that the proceeding to seize and sell the property therein enumerated was illegal, void, and of no effect as to the interest or rights of said Edward F. Stockmeyer or of your orator as curator.

Your orator further shows that if said act of 25th of January, 1884, marked Exhibit D, be illegal and void, as your orator charges it to be, concerning and affecting the rights and interests of Edward F. Stockmeyer, interdict, that then the pledges, one or both, made by Laura Godberry and Noelie Godberry on the 7th of February,
15 1881, and on the 25th of January, 1884, marked respectively Exhibits B and C, are subsisting pledges and first mortgages and privileges on said property, and the indebtedness due to Edward F. Stockmeyer, whatever it be ascertained to be, should be first paid from the proceeds realized from the sale of the property pledged, and that the defendant, Charles P. McCan, is a trustee and should be so adjudged and decreed, to the amount of money he has realized from the sale of mules, machinery in the sugar-house on said Angelina plantation, or of any property whatsoever belonging to said estate since said seizure and sale of M'ch 7th, 1885, or realized from renting said plantation or any part thereof, and should account to this hon. court for the same.

That your orator has not an adequate and complete remedy at law, but must resort to a court of equity therefor.

To the end, therefore, that the said defendants, Charles P. McCan, Henry Godberry, George Godberry, Laura Godberry, and Noelie Godberry and Edward F. Le Bourgeois, may, if they can, show why the sale and adjudication of the property known as the Angelina plantation, together with all the buildings and improvements thereon, including the sugar-house, machinery, engines, boilers, fixtures, apparatus, and appurtenances thereof, mules, carts, wagons, aratory implements, and all articles of personal property thereto attached or used in the cultivation thereof, situated, lying, and being in the parish of Saint John the Baptist, in this State, and on the left bank of the Mississippi river, at about forty-eight miles above the city of New Orleans, and measuring, more or less, twenty arpents
16 front on the Mississippi river by forty arpents in depth, with a double concession between opening lines, and bounded below by property now or formerly belonging unto Esteve Marqueze and above by the property now or formerly belong- to Chenet; also those tracts of land or parcels of land situated in said parish of Saint John the Baptist, in this State, lying and being in the rear of the above-described tract of land and designated or described as follows: Lot or section No. ninety-seven (97), in township eleven (11), east of the Mississippi river, of range No. six (6) east, containing forty-five acres, made to Charles P. McCan on the 7th day of March,

1884, should not be cancelled and set aside and be declared null and void; and that the act of 25th January, 1884, passed before Andrew Hero, Jr., a notary public in and for the parish of Orleans, purporting to be an act of special mortgage and crop lien, should not be cancelled and set aside and adjudged null and void as affecting and concerning the right, title, and interest of Edward F. Stockmeyer, and particularly affecting the interest in a certain pledge made by acts — Feb'y 7th, 1881, and January 25th, 1884; and that the pledge as granted by Laura Godberry and George Godberry to Edward F. Stockmeyer in acts of Feb'y 7th, 1881, and January 25th, 1884, be fully recognized and established and said property in said pledges enumerated be adjudged and decreed to be sold in the manner provided by law and after due advertisement and notice; and that the indebtedness to Edward F. Stockmeyer from defendants Henry Godberry and George Godberry be ascertained and determined by this court, and the priority of the mortgages and privileges rest-
17 ing on said property be declared and be decreed to be paid in their rank and order; and that said defendant, Charles P. McCan, be adjudged and decreed to be a trustee for the sums of money he has collected and realized from the sale of any and all of the property taken possession of by him under the sale and adjudication of March 7th, 1885, and made by the sheriff of the parish of Saint John the Baptist, John Webre, or from the rent of said plantation or of any part thereof or the property thereon, and be required to account to this hon. court therefor; and for such further and other relief in the premises as the nature of the case may require and to your honors seem meet.

And for writs of subpœna to be directed to Charles P. McCan, Henry Godberry, George Godberry, Laura Godberry, Noelie Godberry, and Edward F. Le Bourgeois, commanding them and each of them, at a certain time and under a certain penalty therein to be limited, personally to be and appear before your honors in this honorable court, then and there to answer unto this bill of complaint, and to stand and abide such order and decree therein as to this hon. court shall seem agreeable to equity and good conscience.

(Signed) C. STOCKMEYER,
*Curator of Ed. F. Stockmeyer.*

(Signed) E. W. HUNTINGTON,
A. GOLDTHWAITE, &
JAMES LEGENDRE,
*Sol'rs for Compl't.*

STATE OF LOUISIANA, }
*Parish of Orleans.* }

On this the twenty-fifth day of January, eighteen hundred
18 and eighty-six, before me personally came Carl Stockmeyer and made oath to the above bill subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge except as to matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

(Signed) C. STOCKMEYER.

Sworn to and subscribed before me this 25 January, 1886.
(Signed) OCTAVE MOREL, *Not. Pub.*

*Appearance of McCan and Le Bourgeois.*

Extract from the Chancery Order Book.

EDWARD F. STOCKMEYER, by His Curator,
*vs.*
CHARLES P. MCCAN, EDWARD F. LE BOURGEOIS. } No. 11224.

NEW ORLEANS, MONDAY, *March 1st*, 1886.

The defendants, Charles P. McCan and Edward F. Le Bourgeois, through their solicitors, Rouse & Grant, have this day entered their appearance to the bill of complaint herein.

19 *Answer of C. P. McCan. Filed March 24*, 1886.

United States Circuit Court, Eastern District of Louisiana. In Chancery.

EDWARD F. STOCKMEYER, by CARL STOCKMEYER, His Curator,
*vs.*
CHARLES P. MCCAN *et als.* } No. 11224.

The answer of Charles P. McCan, one of the defendants in the above-entitled cause, to the bill of complaint of Edward F. Stockmeyer, (who sues by his curator, Carl Stockmeyer), complainant in said cause.

To the honorable the judges of the circuit court of the United States for the fifth judicial circuit and eastern district of Louisiana:

This respondent, without in any manner waiving his right to except or demur to said bill on account of many defects and inaccuracies, for answer thereto or to so much thereof as he is advised it is necessary for him to answer, says:

1°.

That it is true, as alleged in the said bill of complaint, that the several notarial acts, of which copy exhibits are filed with the bill, were executed by the parties thereto, and respondent avers that the two acts of January 25, 1884, were executed at the same time and for a common purpose, as hereafter set forth.

20 2°.

Respondent avers that prior to the 25 day of January, 1884, the said Edward F. Stockmeyer made advances to Henry and George Godberry, named in the bill, to enable them to cultivate the Angelina plantation, which advances amounted to about the sum of $32,000, for which he was a creditor on the last-named date; but said debtors were unable to pay, and there was no prospect of

their being able to pay this large sum unless it could be made in the future out of the crops to be produced. For some reason unknown to respondent, but presumably because the said Edward F. Stockmeyer was without means to make further advances, the said George and Henry Godberry applied to this respondent some days prior to January 25, 1884, for a loan of $25,000 with which to purchase the supplies for said plantation for that year, offering to secure the same by a first mortgage.

And respondent avers that said Edward F. Stockmeyer knew and approved of said application, for he subsequently intervened in the act of mortgage marked Exhibit D, filed with the bill in this case, without any solicitation on the part of this respondent, and signed the same and bound himself to the stipulation it contained.

And respondent shows that at the time the application for said loan was made to him he was aware that the two notes of $8,750 each were outstanding and were secured by a first mortgage on said plantation, and refused to grant the loan unless the holders
21 and owners would consent to give his mortgage priority over them. Accordingly, and for the purpose of inducing respondent to make the loan, the Misses Godberry, owners, and Edward F. Stockmeyer, who expected to obtain possession of them by said concurrent act of pledge, intervened in the act of mortgage to respondent and signed the stipulations therein contained waiving the prior mortgage securing the same in favor of the respondent and consenting that in case of a sale of the property respondent's loan should be paid by preference out of the proceeds.

And respondent avers that the complainant by said stipulation made by him in said act postponed any and all rights of mortgage and claims which he had upon said property in favor of this defendant, and such seems to have been the opinion of the curator as expressed in the protest and petition, copies of which are annexed to and made part of the bill of complaint, in both of which it is claimed that said Edward F. Stockmeyer made himself party to the act of mortgage for the purpose of waiving his claim as holder of the two notes for the sum of $8,750 each.

3°.

Respondent avers that prior to and on the 25 day of January, 1884, the said Edward F. Stockmeyer was engaged in business in the city of New Orleans and transacted his affairs, which were quite numerous, for himself, apparently in the full enjoyment and use of all his mental faculties, and respondent had no reason to believe that they were in any degree impaired by insanity or from any other cause.

22 Whether he had lost his capacity to a large extent to attend to business and manage his affairs or whether his mind was seriously impaired so as to affect his understanding and judgment at the time he signed said Exhibit D, this respondent had and has no knowledge or information.

Respondent was not intimate with him, having had only casual intercourse with him, but from the fact that he attended to his busi-

ness affairs respondent believed him to be in his right mind when said mortgage was executed.

Respondent further says that said Edward F. Stockmeyer continued in business as a member of the firm of E F. Stockmeyer & Co. until long after the 27th day of September, 1884, and on or about such date his said curator agreed and consented to respondent making further advances to said plantation over and above the $25,000 represented by the notes secured in the mortgage of January 25, 1884, at which time neither the complainant nor his curator made any objection to the validity of said mortgage on account of insanity or the want of capacity of said Stockmeyer to bind himself.

And when complainant sought through his curator to prevent the sale of the mortgaged property, neither in his petition to the court nor his protest, which have been filed with his bill, did he allege insanity or other infirmity of intellect as a ground of avoiding his consent to the terms of Exhibit D.

Respondent further says that if said curator had notified him of his purpose to repudiate the stipulations made by said Ed-
23 ward F. Stockmeyer as aforesaid on the grounds now urged, as he should have done immediately after his appointment, this respondent would not have advanced the amount of money which he did, nor would he have sold the property in dispute, as he has done, if the claims now put forward on this point had been made known to him ; and he avers that said curator, not having seasonably notified him of his purpose to repudiate said contract, is without equity to be now heard to urge any of said exceptions against its validity.

4°.

Respondent avers that the sale of the mortgaged property by the sheriff of St. John the Baptist parish, under the executory process issued on the said mortgage, Exhibit D, was in all respects legal and valid, and that the said mortgagors, Henry and George Godberry, had the legal right to waive an appraisement of the property and to make all other waivers therein contained, and complainant, having signed said mortgage, consented to the terms and conditions thereof in all respects and is bound by them.

As to the complaint that the mules and other property of a personal character on the plantation covered by the said mortgage were not sold on the plantation, respondent shows that such property was used in the cultivation of the plantation and were attached thereto and were immovable by destination ; that the sheriff had advertised the same, together with the plantation of which they formed a part, for sale, according to law, at the seat of justice of the parish ; but long after the seizure and the date of the first
24 publication of the notices of sale the complainant (being joined therein by Misses Laura and Nellie Godberry) filed the petition and protest referred to in complainant's bill in the district court for the parish of St. John the Baptist, and this respondent submits that such protest was not a demand for a sale of the seized property or any part thereof on the premises, but, if it may be so

construed, it was made after the right to the same had expired, and not by the defendants in the writ, and the sheriff was not bound to comply with any such notices.

And respondent submits that it would have been illegal and irregular to have sold a part of said property as suggested in said protest at a place different from that named in the notice of sale. Moreover, respondent avers that said protest was presented to him a few minutes before 11 o'clock on the day of sale, the sale being advertised to take place at the seat of justice at 12 o'clock. As the plantation was on the opposite side of the river, at least ten miles distant from the seat of justice, complainant knew it to be impossible to comply with his protest; and so respondent charges that said protest was made in bad faith and for the purpose of preventing and defeating the sale altogether, and not to protest complainant's rights in any legal manner.

Respondent further says that the judge who granted the order directing the sheriff to sell according to the terms of said protest had no right or judicial power to grant the same; that the petition upon which it was granted did not pray for any process against
25 the sheriff or this respondent, nor has any ever been issued or served, and the suit has not been prosecuted in any manner to final judgment; and respondent is advised and avers that the said order decided nothing between this defendant and the complainant which ought to affect said sale.

And respondent shows that the plantation, mules, machinery, and implements thereon constituted an estate complete for the purpose of cultivating sugar cane and manufacturing its products, and that it was more valuable as a whole than it would have been if sold separately in the manner set forth in said protest.

And respondent shows that there was due him for advances secured by his said mortgage on the day of sale $20,707.39, with legal interest from January 10, 1885, but that the property sold for only $15,000, leaving a large balance due him which remains unpaid, together with the accrued interest.

Yet respondent avers that the sale was made in a public manner and after compliance with all the formalities and notices required by law, and he cannot see how the want of appraisement could have affected the price bid or the minds of those present for the purpose of bidding.

5°.

Respondent admits that he received $4,000 rent from the property for the year 1885, and that he has rented the same to Edward Le Bourgeois for two years from January 1, 1886, at $5,000 per annum, but he has paid out of the rent for 1885 taxes on the property to the amount of at least one thousand dollars, though he cannot
26 tell the precise amount thereof at present. Respondent has also given said Le Bourgeois the privilege of purchasing the property at the expiration of the lease for $15,000, payable in instalments of $5,000 Dec. 26, 1887, a like sum Dec. 26, 1888, and a like sum Dec. 26, 1889, with 8 per cent. interest from date of purchase.

6°.

Respondent has disposed of mules, horses, and tarpaulins belonging to said plantation, since his purchase, of the value of $6,655; but he has not disposed of any of the machinery belonging to the plantation. All the machinery, however, is old and of no value except as old iron.

And respondent shows that of the mules sold twenty had been purchased by him of the value of $3,616.80 and sent to said plantation on the 13th of February, 1884, and to this extent the plantation was increased in value out of respondent's funds, for which, in equity, he had a lien superior to any claim complainant may have; and even if he should be charged as trustee of complainant, as it is claimed he should be, he should not be charged with the value of said 20 mules.

Finally respondent says that he has obtained no profit for himself out of the transaction which is the subject of complainant's bill; that he has acted in good faith from the first and under the belief that complainant was capable of judging for himself in all business matters, as he was openly engaged in business as a merchant
27 in good standing; certainly this respondent would not have made any advances to the plantation in question if he had even heard rumors against complainant's sanity.

And now, having fully answered complainant's bill, this respondent prays that he may be hence dismissed with his costs in this case wrongfully incurred by reason of this suit, and he prays for all general relief in the premises.

(Signed) C. P. McCAN,
*Respondent.*

(Signed) ROUSE & GRANT, *Solicitors.*

UNITED STATES OF AMERICA, }
*Dist. of La.* }

C. P. McCan, respondent above named, being duly sworn, says that the matters and things stated in the foregoing answer are true.

(Signed) C. P. McCAN.

Subscribed and sworn to before me this 19th day of March, A. D. 1886.

[SEAL.] (Signed) P. L. FOURCHY, *Not. Pub.*

*Replication. Filed March* 29, 1886.

28 U. S. Circuit Court. In Equity.

EDWARD F. STOCKMEYER, by His Curator, }
*vs.* } No. 11224.
C. P. McCAN *et als.* }

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto saith that he will aver and prove his

said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied to by this repliant ; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true ; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

(Signed) A. GOLDTHWAITE,
E. W. HUNTINGTON, AND
JAS. LEGENDRE,
*Sol'rs for Complainant.*

*Bill of Revivor. Filed October* 28, 1886.

29 U. S. Circuit Court, Eastern District of Louisiana. In Equity.

EDWARD F. STOCKMEYER, by His Curator,
*vs.*
CHARLES P. MCCAN *et als.* } No. 11224.

To the hon. the judges of the circuit court for the eastern district of Louisiana:

Humbly complaining, showeth unto your honors the plaintiff, Carl Stockmeyer, a subject of the German Empire, residing in New Orleans, Louisiana, that Edward F. Stockmeyer, late a subject of the German Empire, residing in New Orleans, Louisiana, but now deceased, on or about the 27th day of January, 1886, by his curator, exhibited his original bill of complaint in this honorable court against Charles P. McCan, Henry Godberry, George Godberry, Laura Godberry, Noelie Godberry, and Edward F. Le Bourgeois, as the defendants thereto, thereby stating—

That heretofore, on or about the 7th day of February, 1881, by public act before Nicholas B. Trist, a notary public in and for the parish of Orleans, the defendants, Laura Godberry and Noelie Godberry, did pledge to Edward F. Stockmeyer two several promissory notes made by Henry Godberry and George Godberry to their own order and by them endorsed, dated February 20th, 1880, each for the sum of eight thousand seven hundred and fifty dollars, payable one year after date, with interest at the rate of six per cent. per annum from date until paid, with privilege to makers of extending the said notes from year to year for four years upon pay-
30 ment of interest, and which notes were secured by mortgage and vendor's privilege on a plantation known as "the Angelina plantation," in the parish of Saint John the Baptist, as will more fully appear by certified copy of the act of mortgage and vendor's lien passed before N. B. Trist, a notary public in and for the parish of Orleans, hereto attached and marked Exhibit A. The act of pledge from said Laura Godberry and Noelie Godberry will more fully appear from a duly certified copy hereto attached, marked Exhibit B, and made a part of this bill.

Your orator, further complaining, says that by public act before Andrew Hero, Jr., a notary public in and for the parish of Orleans, on the 25th day of January, 1884, Laura Godberry and Noelie Godberry, to secure an indebtedness from Henry Godberry and George Godberry to Edward F. Stockmeyer in the sum of thirty-two thousand dollars, with interest at eight per cent. per annum from the 24th day of February, 1884, until paid and attorney's fees at five per cent. on amount sued for, did pledge to said Edward F. Stockmeyer two certain promissory notes for the sum of eight thousand seven hundred and fifty dollars each, drawn by Henry and George Godberry to their own order and by them endorsed, dated at New Orleans the 20th day of February, 1881, and both payable one year after date, with interest at six per cent. per annum from date, said notes being marked 3 and 4, and payment thereof being secured by special mortgage and vendor's privilege, duly recorded, upon the Angelina plantation, as will appear by the act of mortgage, a duly certified copy of which is hereto attached and marked Exhibit A.

31 By the terms of said act of pledge it was agreed to by and between the said Laura Godberry and Noelie Godberry and the said Edward F. Stockmeyer that in the event of the failure of Henry Godberry and George Godberry to pay the indebtedness of thirty-two thousand dollars and interest and costs added on or before the 25th day of January, 1885, that said Stockmeyer, his heirs or assigns, were duly authorized to take such legal proceedings as he might deem necessary to enforce the payment of the notes therein pledged, and to appropriate the proceeds of said sale to the payment of any amount that might then be due and owing unto him, Stockmeyer, from said Henry and George Godberry on account of said Angelina plantation. The interest was paid to February 20th, 1884, and the payment of said notes was postponed until 25th day of January, 1885; all of which will more fully appear by reference to the duly certified copy of the act of pledge passed before Andrew Hero, Jr., a notary public in and for the parish of Orleans, on the 25th day of January, 1884, made a part of this bill, attached hereto, and marked Exhibit C.

Your orator, complaining, says that the land and property embraced in the special mortgage and vendor's privilege to secure the notes pledged to Edward F. Stockmeyer were—

A certain tract of land, established as a sugar plantation, situated in the parish of Saint John the Baptist, on the left bank of the Mississippi river and about forty-eight miles above the city of New Orleans, and composed of the following-described tracts, to wit:

1°. A tract measuring seventeen arpents, more or less, front
32 on the said river by forty arpents in depth, between opening lines, the upper fourteen arpents thereof having a double concession, bounded on the upper side by the tract which shall be hereinafter secondly described and on the lower line by the property formerly belonging to Esteve Marqueze.

2°. Another tract, measuring about one arpent and a half front on said river by forty arpents in depth between opening lines, with

a double concession, bounded above by the tract hereinafter fourthly described and below by the one herein firstly described.

3°. Another tract, measuring one arpent front to the river by forty arpents in depth, with a double concession, bounded above by the property late of Eugene Chenet and below by the tract hereinafter fourthly described; and

4°. Another tract, measuring one-half arpent front to the river by forty arpents in depth, with a double concession, bounded above by the tract herein thirdly described and below by the one herein secondly described.

And also the following back lands, to wit: Lot or section ninety-seven (97), in township eleven (11), east of the Mississippi river, of range six (6) east, in the district of lands subject to sale at New Orleans, containing forty-five acres, together with all the buildings and improvements on said tracts of land, forming one plantation known as the "Angelina plantation," the machinery, engines, apparatus, carts, wagons, tools, implements of husbandry, mules and other live stock, corn and fodder, the growing crops, and every-
33 thing to said plantation belonging or appertaining, without exception or reservation.

And your orator, further complaining, says that on the said 25th day of January, 1884, there was made and signed in the city of New Orleans what purports to be a special act of mortgage and crop lien by public act before Andrew Hero, Jr., a notary public in and for the parish of Orleans. The said act was signed by Henry Godberry, George Godberry, Laura Godberry, Noelie Godberry, and Charles P. McCan. A duly certified copy of said act is hereto attached, made part hereof for reference, and marked Exhibit D.

Your orator shows that by the terms of said act certain notes therein specified for the sum of twenty-five thousand dollars were made *in solido* by the said Henry Godberry and George Godberry to their order and by them endorsed, divided into sums of five thousand dollars each and payable at the New Orleans National Bank on the 15th, 20th, and 27th days of December, 1884, and on the 5th and 15th days of January, 1885, respectively, with six per cent. interest per annum after maturity; that said notes were secured or attempted to be secured by special mortgage and crop lien on property in said act enumerated.

Your orator, complaining, shows that upon a default in the payment of one or more of the above-described notes the said Charles P. McCan, the holder and owner thereof, did proceed by executory process, in the twenty-sixth judicial district court, parish of Saint John the Baptist, in suit No. 197 on the docket of said court, in the matter of Charles P. McCan *vs.* Henry Godberry and George Godberry, to seize and sell the following-described prop-
34 erty, to wit:

All and singular that certain tract of land or plantation, together with all the buildings and improvements thereon, including the sugar-house, machinery, engines, boilers, fixtures, apparatus, and appurtenances thereof, mules, carts, wagons, aratory implements, and all articles of personal property thereto attached or used

in the cultivation thereof, situated, lying, and being in the parish of Saint John the Baptist, in this State, on the left bank of the Mississippi river, at about forty-eight miles above the city of New Orleans, and including, more or less, twenty arpents front on the Mississippi river by forty arpents in depth, with a double concession between opening lines, and bounded below by property now or formerly belonging unto Esteve Marqueze, and above by the property now or formerly belonging to E. Chenet.

Also those tracts of lands or parcels of land situated in said parish of St. John the Baptist lying or being in the rear of the above-described tract of land and designated and described as follows: Lot or section No. 97, in township No. 11, east of Mississippi river, of range No. 6 east, containing forty-five acres.

That at said sale on the 7th day of March, 1885, the above-described property, with all its appurtenances, was adjudicated to Charles P. McCan for the price of fifteen thousand dollars cash, and deed was made to the purchaser by one John Webre, sheriff of the parish of St. John the Baptist.

Your orator, further complaining, says that the defendant, Charles P. McCan, did thereafter, under said sheriff, enter into pos-
35 session of said property, movable and immovable, its use and enjoyment, and that after he came into possession of the same the said McCan sold the mules and machinery in the sugar-house on the said plantation for a sum approximating ten thousand dollars, as your orator is informed and believes and so charges.

And, further, upon information and belief, that the said McCan did lease the said plantation for the year 1885 to Edward Le Bourgeois for the sum of five thousand dollars, and which sum has been collected by said Charles P. McCan, and has again leased the said plantation to the said Edward F. Le Bourgeois for two years from January 1, 1886, for the sum of five thousand dollars, and that the said Le Bourgeois has possession of the same and holds as the lessee and tenant of said Charles P. McCan; and, furthermore, that the title of said Charles P. McCan rests solely in the sheriff's deed above referred to and hereto attached, made part hereof, marked Exhibit E, which said title is based upon the adjudication made to Charles P. McCan of the property on the 7th day of March, 1885.

Now, your orator avers that said sale was irregular, illegal, and defective and is null and void, and shows to this hon. court that before the said sale was made a protest was made by the defendant in said suit No. 197 on the docket of the district court for the parish of St. John the Baptist, twenty-sixth judicial district, and said protest was filed in the record of said suit on the 5th day of March, 1885, as will appear by a duly certified copy of said petition
36 and protest hereto attached, made part of this bill, and marked Exhibit F; that upon presentation of the petition and protest to the judge presiding, the Hon. Henry L. Duffel, the following order was made: "Upon reading the foregoing petition and considering articles 666 and 676 of the Code of Practice, let the sheriff of the parish of St. John the Baptist be, and he is hereby, directed and instructed to sell the property described in the foregoing petition in

the order and manner set forth therein, and let the same be sold separately, as above set forth and prayed for in said petition, the plantation to be sold first at the court-house and the other articles on the plantation, as prayed for." Said order was made on the 4th day of March, 1885, and was promptly notified to the sheriff of said parish. In addition thereto, your orator, Carl Stockmeyer, as curator of Edward F. Stockmeyer, did, through his attorneys, St. Maurice Berault and James Legendre, notify the said Charles P. McCan, plaintiff and seizing creditor in said suit No. 197, and John Webre, the sheriff of the parish of St. John the Baptist, of his, said Carl Stockmeyer's, protest as curator of Edward F. Stockmeyer against the sale of the property seized in the executory proceedings above numbered being made without all of said property being duly and separately appraised according to law, and against said property being offered for sale and adjudicated in block to any purchaser, and in the said protest notified to said McCan and said sheriff, Webre, and filed in the record of said suit No. 197 did fully and particularly set forth his claim and his right to consideration; all of which will more fully appear by reference to the protest and
37 notice, a certified copy of which is hereto attached, marked Exhibit G, and made a part of this bill.

But your orator avers that in utter disregard of his rights as curator and of the notice given by your orator's said attorneys, as well as of the petition and protest filed by defendants, Henry Godberry and George Godberry, in said suit No. 197, and of the order of the judge of said court, and in disobedience thereof, the said Charles P. McCan personally, or acting through his agent and attorney, and the said John Webre, sheriff of the parish of St. John the Baptist, did sell all of said property at the court-house door, in block, without any appraisement having been made or such appraisement as the law required, and not in the form and manner that such sales are required to be made by the law of Louisiana; that by such conduct and illegal proceeding the sale did not realize a fair value, and persons who would have been present at said sale and would have bid upon said property did not attend and were prevented from bidding on account of the illegal method of sale resorted to.

And your orator, further complaining, says that the sale was made upon executory process sued out on the alleged act of special mortgage and crop lien heretofore referred to and marked Exhibit D. Among others, the said act contains covenants attempting to bind the defendants in suit No. 197, above referred to, Henry Godberry and George Godberry, and through them all subsequent parties having any interest therein, not to require any appraisement of the property enumerated in said act in case of seizure and sale,
38 and in advance dispensing with an appraisement, and waived all legal delays and appeals and writs of error and right of appeal, and authorized the holder of any of the notes to enter judgment before any court of competent jurisdiction, without any citation or previous notice of any kind, on a mere production of an authentic copy of the said act for the whole or part of said indebtedness, attorney's fees, costs, charges, expenses, &c., provided that exe-

cution should be stayed until maturity of the notes sued on; and, further, the said Henry Godberry and George Godberry in said act stipulated that in case a forced sale should become necessary from any cause whatsoever, whether from failure or inability to pay or otherwise, said Henry Godberry and George Godberry did waive and acknowledge legal service of notice to appoint an appraiser, and to subdivide, as well as all legal delays, and consented to the immediate execution of any judgment which might be entered, and further promising that no injunction or process of law tending to delay a sale should be resorted to by them or by any one holding under them, and expressly renouncing such right or privilege; and Henry and George Godberry further agreed and consented that any and all laws of the State pertaining to privileges and supplies furnished or money advanced and used for the purchase of necessary supplies and the payment of necessary expenses, laborers, etc., to carry on a farm or plantation shall and do hereby expressly refer and have full force and effect, and did obligate themselves to ship and consign the entire crop of sugar and molasses made and produced and gathered on the Angelina plantation during the
39 year 1884 to the said mortgagee, or his representatives or assigns were authorized at once to sequester the said crops or the proceeds thereof in whomsoever hands the same might be, regardless of any sale or transfer thereof, and to ship the same, if in kind, to said McCan, who was empowered to sell the same at the current market prices, and to hold the net proceeds, after deduction of all costs, charges, expenses, commissions, and attorney's fees, which net proceeds should stand in lieu of the property sequestered; and did further relinquish their right to bond and the delay granted therefor, and consented that the sequestration should stand in the place of the release bond required by law, and that sequestration should issue and judgment be entered up at the option of the holder of said notes or of either of them without notice or citation of any kind, expressly confessing judgment and waiving all notices and citations required by law, and consenting that no appeal should be taken from any of the proceedings or from the judgment; and, furthermore, waived all exceptions to jurisdiction, and did acknowledge and recognize jurisdiction of the court before which process might be sued out for the purpose of subjecting such crops to the rights of the holders or holder of such notes or open acccounts and confess judgment therefor, so as to hold the said crops subject thereto; and, furthermore, did agree that said McCan should charge and — allowed two and one-half per cent. commission and one-half per cent. brokerage, besides eight per cent. interest per annum, and further authorized said McCan to charge two and one-half
40 per cent. commission and customary brokerage for accepting, endorsing, buying, and selling; and, moreover, expressly waive and relinquish in favor of said McCan or any future holder or holders of said notes or of either of them of all rights and privileges of going into bankruptcy or of using the insolvent or respite or bankrupt laws of the United States, of the State or county in which they may hereafter reside until the whole amount of the stipulated

indebtedness shall have been paid, unless with the consent of the said mortgagee or of such person and persons as may be the future owner or owners of said note.

Your orator avers that the said stipulations in said act marked Exhibit D are illegal and void and cannot bind Henry Godberry and George Godberry and through them any creditor or junior mortgagee, and particularly your orator or the said interdict if he be adjudged to have lawfully signed said paper, which your orator denies.

Your orator avers that the defendants, Laura and Noelie Godberry, at the date of said act, to wit, the 25th day of January, 1884, were not the holders and owners of the two certain promissory notes for the sum of eighty-seven hundred and fifty — each, marked 3 and 4 and drawn by Henry Godberry and George Godberry to their order and by them endorsed, dated at New Orleans, February 20th, 1880, but that said notes had been pledged to E. F. Stockmeyer, first by act marked Exhibit B and again by act marked Exhibit C, and that said Edward F. Stockmeyer held a special property in said notes to secure the indebtedness due to him.

Your orator further, complaining that the act of 25th Jan-
41 uary, 1884, marked Exhibit D, does not in terms subordinate the pledge of Edward F. Stockmeyer to the claim and notes of Charles P. McCan, nor can such interpretation be made of said act except by adding to it or varying its terms.

And your orator avers that such was not the intention at the time said act was passed.

Plaintiff avers that there was no consideration given to or hoped for by said Edward F. Stockmeyer to induce him to part with such valuable security or to make it probable that he, Edward F. Stockmeyer, ever intended to subordinate his right of pledge set forth in Exhibits B and C or either of them to the special mortgage and crop lien of Charles P. McCan, nor does any consideration appear on the face of the papers.

Your orator further shows that at that time, to wit, the 25th of January, 1884, the said Edward F. Stockmeyer was losing and to a large extent had lost his capacity to attend to business and to manage his affairs; that his mind was seriously impaired so as to affect his understanding and judgment, and continued until, in the month of November, 1884, on the eleventh day of said month, said Edward F. Stockmeyer was judicially interdicted, but on or about the 20th day of February, 1884, previous thereto, was placed in an asylum; that said act was not the expression of a sound mind, and is illegal and void and not binding on said Edward F. Stockmeyer, his heirs or assigns, and that the proceeding to seize and sell the property therein enumerated was illegal, void, and of no effect as to
42 the interest or rights of said Edward F. Stockmeyer or of your orator as curator.

Your orator further shows that if said act of 25th of January, 1884, marked Exhibit D, be illegal and void, as your orator charges it to be, concerning and affecting the rights and interests of Edward F. Stockmeyer, interdict, that then the pledges—one or

both—made by Laura Godberry and Noelie Godberry on the 7th of February, 1881, and on the 25th of January, 1884, marked, respectively, Exhibits B and C, are subsisting pledges and first mortgages and privileges on said property, and the indebtedness due to Edward F. Stockmeyer, whatever it be ascertained to be, should be first paid from the proceeds realized from the sale of the property pledged, and that the defendant, Charles P. McCan, is a trustee and should be so adjudged and decreed to the amount of money he has realized from the sale of mules, machinery in the sugar-house on said Angelina plantation, or of any property whatsoever belonging to said estate since said seizure and sale of March 7th, 1885, or realized from renting said plantation or any part thereof, and should account to this hon. court for the same; that your orator has not an adequate and complete remedy at law, but must resort to a court of equity therefor, praying that the sale and adjudication of the property known as the Angelina plantation to Charles P. McCan on the 7th day of March, 1885, shall be set aside and be declared null and void, and that the act of 25th January, 1884, passed before Andrew Hero, Jr., a notary public in and for the parish of Orleans, purporting to be an act of special mortgage and crop lien, shall be
43 cancelled and set aside and adjudged null and void as affecting and concerning the right, title, and interest of Edward F. Stockmeyer, and particularly as affecting his interest in a certain pledge made by acts February 7th, 1881, and January 25th, 1884, and that the pledge as granted by Laura Godberry and George Godberry to Edward F. Stockmeyer in act of February 7th, 1881, and January 25th, 1884, be fully recognized and established and said property in said pledges enumerated be adjudged and decreed to be sold in the manner provided by law and after due advertisement and notice, and the indebtedness to Edward F. Stockmeyer from defendants, Henry Godberry and George Godberry, be ascertained and determined by this court, and the priority of the mortgages resting on said property be declared and be decreed to be paid in their rank and order, and that said Charles P. McCan be adjudged and decreed to be a trustee for the sums of money he has collected and realized from the sale of any and all of the property taken possession of by him under the sale and adjudication of March 7th, 1885, and made by the sheriff of the parish of St. John the Baptist, John Webre, or from the rent of said plantation or any part thereof or the property thereon, and be required to account to this hon. court therefor and for general relief.

And the plaintiff further showeth that the defendant, Charles P. McCan, having been duly served with process for that purpose, appeared and put in an answer to said bill, as in and by the said original commanded so to do; that an appearance had been entered for defendant, Edward F. Le Bourgeois; that the said plaintiff,
44 Edward F. Stockmeyer, lately, on or about the — day of September, 1886, departed this life, having first made and published his last will and testament in writing, bearing date the 5th day of June, 1874, and thereby appointed Carl Stockmeyer, your orator, his testamentary executor; that your orator, Carl Stockmeyer, has had issued to him letters testamentary, and has qualified

as testamentary executor in the civil district court for the parish of Orleans in division ; that one of the defendants, Charles P. McCan, lately, on or about the 19th day of September, 1886, departed this life intestate, leaving a widow, Mary G. Tobin McCan, who was separate in property by marriage contract, and four children, all minors, named Kate Elizabeth, Fannie Tobin, David Chambers, and Hester Margaret, and a child unborn, of which David Chambers McCan has been appointed curator ; that the said widow, Mary G. Tobin McCan, has been appointed the natural tutrix of the minor children above named and David Chambers the curator of the child unborn, in proceedings taken in the civil district court for the parish of Orleans, and that the said Mary G. Tobin McCan and the said David Chambers McCan have qualified as natural tutrix and curator.

And plaintiff further shows that the said suit and proceedings have become abated by the death of the said Edward F. Stockmeyer and one of the defendants, Charles P. McCan, and that your orator, as testamentary executor of said Edward F. Stockmeyer, is entitled to have the said suit and proceedings revived against the said Mary G. Tobin McCan individually and as natural tutrix of her minor children, Kate Elizabeth, Fannie Tobin, David Cham-
45 bers, and Hester Margaret McCan, and against David Chambers McCan, curator of the child unborn, and to have the said cause put in the same plight and condition as the same was in previously to the abatement thereof by the death of Edward F. Stockmeyer and Charles P. McCan.

To the end, therefore, that the said defendants may answer the premises, and that the said suit and proceedings which so became abated as aforesaid may stand revived and be in the same state and condition as the same were in at the time of the death of the said Edward F. Stockmeyer and Charles P. McCan, or that the defendants may show good cause to the contrary, may it please your honors to grant unto plaintiff writs of subpœna to revive, issuing out of and under the seal of this honorable court, to be directed to the said Mary G. Tobin individually and as natural tutrix of her minor children, Kate Elizabeth, Fannie Tobin, David Chambers, and Hester Margaret McCan, and to David Chambers McCan, curator of the child unborn, thereby commanding them and each of them, at a certain day and under a certain penalty to be therein limited, personally to be and appear before your honors in this honorable court, then and there to show cause, if they can, why the said suit and the proceedings therein had should not stand and be revived against them and be in the same plight and condition as the same were in at the time of the abatement thereof; and, further, to stand to and to abide such order and decree in the premises as to your
46 honors shall seem meet; and the plaintiff shall ever pray.

(Signed) C. STOCKMEYER,
*Executor of Ed. Stockmeyer.*

(Signed) ALFRED GOLDTHWAITE,
E. W. HUNTINGTON &
JAMES LEGENDRE,
*Sol'rs for Complainant.*

STATE OF LOUISIANA, }
*City of New Orleans.* }

On this the twenty-seventh day of October, 1886, before me personally came Carl Stockmeyer and made oath to the above bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

(Signed) C. STOCKMEYER.

Sworn to and subscribed before me this 27th day of October, 1886.

[SEAL.] (Signed) OCTAVE MOREL,
*Notary Public.*

*Appearance of the Legal Representatives of C. P. McCan, Deceased. Filed 6 Nov'r, 1886.*

47 U. S. Circuit Court, Eastern District La.

EDWARD F. STOCKMEYER, by His Curator,
*vs.*
CHARLES P. McCAN *et als.* } No. 11224.

Now comes Mrs. Mary G. Tobin in her own behalf as the widow of Charles P. McCan and as natural tutrix of the minors, Kate Elizabeth, Fannie Tobin, David Chambers, and Hester Margaret McCan, heirs of Charles P. McCan, deceased, and David Chambers McCan, curator of the unborn child of said deceased, and make themselves parties defendant to the complainant's bill of complaint as the legal representatives of said deceased.

(Signed) ROUSE & GRANT,
*Solicitors for Def'ts.*

*Pro Confesso.*

Extract from the Chancery Order Book.

THURSDAY, *March* 10, 1887.

EDWARD F. STOCKMEYER, by His Curator,
*vs.*
CHAS. P. McCAN *et als.* } No. 11224.

48 On motion of A. Goldthwaite and E. W. Huntington, solicitors for complainant, and it appearing that Henry Godberry, George Godberry, Laura Godberry, and Noelie Godberry, defendants, have been duly served with process of subpœna herein, and that said defendants have failed to enter their appearance to said complainant's bill of complaint within the time required by law—

It is ordered that said complainant's bill of complaint as to all the matters and things therein alleged and set forth be, and the same is hereby, adjudged and taken as confessed as against each and all of said defendants.

*Hearing and Submission.*

Extract from the Minute Book, November Term, 1886.

NEW ORLEANS, THURSDAY, *March* 10, 1887.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.

EDWARD F. STOCKMEYER, by His Curator,
*vs.*
CHARLES P. MCCAN *et als.* } No. 11224.

49 This cause came on to be heard at this term on the bill, the answer of the defendant, Charles P. McCan, the replication thereto, and other proceedings in the cause—present, Alfred Goldthwaite, E. W. Huntington, and James Legendre, for the complainant; Rouse & Grant on behalf of the said defendant—whereupon the complainant offered the following evidence in support of his bill, to wit:

Deposition of Henry Godberry.
Act of sale—Ex. A.
Act of pledge—Ex. B.
Act of pledge—Ex. C.
Copy mortgage and crop lien—Ex. D.
Sheriff's deed—Ex. E.
Copy petition and protest—Ex. F.
Protest of Carl Stockmeyer—Ex. "G."
Notes—Exs. "H" and "J."
Copy petition, etc.—Ex. K.
Deposition of Carl Stockmeyer.
George Godberry.
Transcript of record—Ex. "P."
Sheriff's deed to McCan—Ex. "R."
Dep. Carl Stockmeyer, Frederick Muller, J. F. Schroeder, Dr. E. T. Shepard, Dr. F. Loeber, Dr. A. W. Smythe, Adolphe Woerte, E. W. Huntington, Alf. Goldthwaite.
Statement of account—Ex. "W."

And the defendant offered the following evidence in sup-
50 port of his answer, viz:

Exhibits marked "L" and "M" in connection with deposition of Henry Godberry.
Agreement at foot of Ex. "M."
Deposition of Andrew Hero.
Draft marked McCan 2.
Check marked McCan 1.
Account marked McCan "3."
And complainant's admissions as to account.

And the cause was thereupon argued by the counsel for the respective parties and submitted, when the court took time to consider.

*Complainant's Evidence.*

Testimony for complainant.

Circuit Court United States, Eastern District of La.

E. F. STOCKMEYER, by CARL STOCKMEYER,
*vs.*
C. P. MCCAN *et als.* } No. 11224.

Agreement as to the taking of evidence.

It is agreed that the evidence in this case may be taken
51 before Henry Langford, notary public, with like effect as if before a duly appointed examiner under the rule.

April 17, 1886.

(Signed) ROUSE & GRANT,
*Sol's for C. P. McCan, Defendant.*
A. GOLDTHWAITE &
E. W. HUNTINGTON,
*For Complainants.*

United States Circuit Court, Eastern District of Louisiana.

EDWARD F. STOCKMEYER *et als.*
*vs.*
CHAS. P. MCCAN *et al.* } No. 11224.

Testimony taken on behalf of the complainant, as per the foregoing agreement, by Henry Langford, notary public, duly appointed and qualified to take depositions under the act of Congress, at New Orleans, this 2d day of December, 1886.

Present: Alfred Goldthwaite, Esqr., solicitor for complainant; William Grant, Esqr., solicitor for defendants.

Mr. Goldthwaite offers in evidence Exhibit "A," being the act of sale of the plantation by Mrs. A. Godberry to Henry Godberry and George Godberry, a certified copy of the said act made before
52 N. B. Trist, notary public, dated February 20, 1880.

Also Exhibit "B," act of pledge by Miss Laura and Miss Noelie Godberry to E. F. Stockmeyer before N. B. Trist, notary public, dated February 7th, 1881.

Also Exhibit "C," certified copy of the act of pledge by Miss Laura Godberry and Miss Noelie Godberry to Ed. F. Stockmeyer before Andrew Hero, Jr., notary public, dated the 25th January, 1884.

Also Exhibit "D," certified copy of mortgage and crop lien by Henry Godberry and George Godberry to Charles P. McCan, dated the 25th January, 1884, before Andrew Hero, Jr., notary public.

Also Exhibit "E," a certified copy of the sheriff's deed in suit No. 197, twenty-sixth judicial district court, parish of Saint John

Baptiste, in the case of Charles P. McCan *versus* Henry Godberry and George Godberry.

Also Exhibit "F," certified copy of petition and protest of defendants, Henry Godberry and George Godberry, in case No. 197, twenty-sixth judicial district court, parish of Saint John the Baptiste, Charles P. McCan *versus* Henry Godberry and George Godberry.

Also Exhibit "G," protest of Carl Stockmeyer, curator of Edward F. Stockmeyer, interdict, filed in case No. 197, twenty-sixth judicial district court, parish of Saint John the Baptiste, Charles P. McCan *versus* Henry Godberry and George Godberry.

Also two notes, marked respectively "H" and "J," for $8,750 each, dated New Orleans, February 20, 1880, payable one year after date, with interest, at the rate of six per cent. per annum, from date until paid, signed Henry Godberry, George Godberry,
53 to the order of themselves, and by them endorsed Henry Godberry, George Godberry; interest paid to February 20, 1884; said notes paraphed "*ne varietur*," secured by mortgage and vendor's privilege by act passed before me this day.

New Orleans, February 20, 1880.

N. E. TRIST,
*Notary Public.*

Also Exhibit "K," certified copy from W. J. McGeehan, clerk civil district court for the parish of Orleans, of the petition, affidavit, order, return, and citation, letters as *curator ad hoc* of Edward F. Stockmeyer issued to Carl Stockmeyer, report of doctors, citation, return on citation, and judgment, certificate of clerk and recorder of mortgages in suit No. 12315, interdiction of Edward F. Stockmeyer, civil district court, parish of Orleans.

HENRY GODBERRY, a witness produced, sworn, and examined on behalf of complainant, deposes and says:

By Mr. GOLDTHWAITE:

Q. Are you one of the defendants in this case?
A. Yes, sir; I am.
Q. Did you know Edward F. Stockmeyer?
A. I did.
Q. Did you have any dealings with Mr. Edward F. Stockmeyer prior to the 25th January, 1884?
A. We had dealings from 1880 to 1883, inclusive.
54 Q. Dealings of what character?
A. Advances to the Angelina plantation.
Q. Can you state what your indebtedness to Mr. Edward F. Stockmeyer was on or about the 25th January, 1884?
A. The balance against us was about $30,000 or a little over that, as well as I can remember.
Q. Was there any security held by Mr. Edward F. Stockmeyer for the balance which you owed him?

A. Yes, sir; two notes—mortgage notes—of Laura and Noelie Godberry.

Q. Will you look at the notes marked "H" and "J" and state whether these are the notes which Mr. Edward F. Stockmeyer held as security?

(Witness identifies the notes presented to him.)

A. Yes, sir; $8,750 each.

Q. Was that all the security that Mr. Edward F. Stockmeyer had?

A. No, sir; he had other notes—the notes of Laura and Noelie Godberry.

Q. Did Edward F. Stockmeyer have any other security?

A. He had the Angelina plantation as security.

Q. In what form did he have that plantation?

A. Secured by four notes, all of them amounting to $35,000.

Q. Had not the two preceding notes been paid?

A. No, sir.

Q. Are you certain of that?

A. Yes, sir; if I understand your question.

55 Q. I ask you if Mr. Edward F. Stockmeyer had any other security for the payment of what you owed him than these two notes which you have identified, marked "H" and "J."

A. Yes, sir.

Q. What other security?

A. Two other notes besides these; but that was before this transaction. The other two notes had been cancelled prior to the transaction referred to in this suit.

Q. Then did he or did he not have any other security?

A. No, sir.

Q. Has that indebtedness been paid to Mr. Edward F. Stockmeyer?

A. No, sir; a balance of over $30,000 is due.

Q. Did you have a knowledge of the transaction which took place on the 25th January, 1884, in the act drawn up before Mr. Andrew Hero, Jr., notary public, which Edward F. Stockmeyer, Charles P. McCan, George Godberry, Henry Godberry, Noelie Godberry, and Laura Godberry signed?

A. Yes, sir; we were present.

Q. Was any money paid to Mr. Edward F. Stockmeyer on that occasion?

A. No, sir; not to my knowledge.

Q. Had any money been paid to him prior to that time to induce him to sign that paper?

A. No, sir.

Q. Has any money been paid to him since that time under any promise made at that time?

56 A. To Mr. Stockmeyer?

Q. Yes.

A. No, sir; the only money paid over to Mr. Stockmeyer was the interest on $30,000, ahead, for the year 1884.

Q. When was that interest paid?

A. That was paid about—I suppose in the neighborhood of the 23d March, so far as I can remember—the latter part of March.

Q. In what year?

A. The year 1884.

Q. To whom was that paid?

A. That was paid to Mr. Edward F. Stockmeyer.

Q. Where was that payment made?

A. That payment was made by a check—we gave Mr. Edward F. Stockmeyer a draft for that amount, which we drew from C. P. McCan; H. and G. Godberry signed it.

Q. You gave it to Mr. Edward F. Stockmeyer?

A. Yes, sir.

Q. Did you do it in person?

A. Yes, sir; I did.

Q. Where was Mr. Edward F. Stockmeyer when you paid him that interest by that check?

A. Mr. Stockmeyer was in this city, in his office.

Q. Are you certain of that?

A. Yes, sir; I am.

Q. Now, do you not know that Mr. Edward F. Stockmeyer was in the Louisiana Retreat at that time?

57 A. No, sir.

Q. Were the conversations and dealings which led up to this act of the 25th January, 1884, had entirely with Mr. Edward F. Stockmeyer or with anybody else?

A. With Edward F. Stockmeyer.

Q. How long prior to this act being signed were you negotiating with Mr. Edward F. Stockmeyer to induce him to sign that act?

A. Well, there was no time taken up to that effect, to my judgment.

Q. Was it done within a few days or how long a time, about?

A. Yes, sir; that was after the transaction was made, or the agreement.

Q. No; I say to induce him to sign this act, how many conversations or over what period of time did your conversation with him extend?

A. About a couple of weeks, it must be.

Q. Did you have any difficulty in arranging the matter with him?

A. No, sir; he only wanted his mortgage to go ahead.

Q. What do you mean by the words "wanted his mortgage to go ahead?"

A. Mr. McCan wanted his mortgage to go ahead of Mr. Stockmeyer's.

Q. Did you have any difficulty with Mr. Stockmeyer in inducing him to sign this act?

A. No, sir.

Q. Why were you two weeks in arranging it if you had no difficulty?

58 A. Well, the matter was delayed for some reason or other; I don't know what.

Q. Please state what the nature of your conversations were with Mr. Edward F. Stockmeyer.

A. He merely stated that he had no money to run us, and that if Mr. McCan would be willing to run us for the coming year that he would be satisfied to that effect.

Q. Was that all that occurred?

A. Yes, sir; that was about the whole of it; that is what it amounted to.

Q. Did you bring Mr. McCan to Mr. Stockmeyer, or did Mr. Stockmeyer suggest Mr. McCan to you?

A. He said that he would go and see Mr. McCan himself.

Q. Did you go first to Mr. McCan?

A. Yes, sir.

Q. How long before you saw Mr. Stockmeyer was it that you had seen Mr. McCan?

A. How long before this transaction?

Q. Yes.

A. You mean before the first visit?

Q. Yes.

A. I think it was about a few days—three or four days.

Q. Were you present when Mr. McCan saw Mr. Stockmeyer?

A. I was, the last time.

Q. Was there any difficulty in making the arrangement with Mr. Stockmeyer by Mr. McCan?

59 A. The matter was postponed—at least, Mr. McCan put Mr. Stockmeyer off a few days for a decided answer.

Q. Do you know that Mr. Stockmeyer ever went to see Mr. McCan?

A. Yes, sir.

Q. Did he go to see Mr. McCan?

A. Yes, sir; Mr. Stockmeyer called on Mr. McCan.

Q. Where?

A. At Mr. McCan's office.

Q. Were you present?

A. Yes, sir; I was.

Q. Did you go with him?

A. I did.

Q. Did you take him to Mr. McCan's office?

A. Yes, sir; I did.

Q. At whose instance did he go to Mr. McCan's office?

A. I think of his own accord.

Q. Why did you go with him?

A. To see what Mr. McCan would say about the advances for the year.

Q. Did he go more than once?

A. Yes, sir; he went more than once.

Q. Did you go with him?

A. I don't remember whether I did or not. I am not positive.

Q. Are you positive that he went more than once?

A. Yes, sir.

Q. with whom did he go, if he did not go with you more
60 than once?

A. I think Mr. J. W. Godberry was at the office once. I don't remember exactly.

Q. Will you state what occurred between Mr. McCan and Mr. Stockmeyer when you were present?

Mr. Grant, for the defendants, objects to the question if the witness is required to repeat any conversations between the parties, because both of them are now dead.

Q. I only want you to state what occurred with reference to the making of this act between Mr. Stockmeyer and Mr. McCan when you were present.

A. The exact conversation I cannot remember. The whole thing was that Mr. Stockmeyer wanted to close up with us; he wanted somebody to run us, and to that effect he called on Mr. McCan and asked him whether he would do it, and Mr. McCan laid down the law to him and they came to an agreement or terms.

Q. Do you remember what those terms were?

A. That his mortgage should go ahead of Mr. Stockmeyer's one year, and that he, McCan, would have an iron-clad mortgage.

Q. Was that all?

A. Yes, sir; that was the substance of the whole thing; that was the object of his call.

Q. Were you or was your brother, George Godberry, the one who negotiated this business and attended to it?

A. I think it was both of us together.

61 Cross-examined by Mr. GRANT:

Q. You and your brother were cultivating the Angelina plantation in 1883, were you not?

A. Yes, sir.

Q. And you received your advances for that year from Edward F. Stockmeyer & Co., did you not?

A. Yes, sir.

Q. And at the end of the year 1883 they were unable to make advances for the year 1884, were they not?

A. Yes, sir.

Q. Did they so inform you?

A. Yes, sir; they did.

Q. What suggestion did they make to you with regard to the advances for the year 1884?

A. Who—Mr. Stockmeyer?

Q. Yes. Did they not suggest to you that you should get another merchant to make advances for the year 1884?

Mr. Goldthwaite, for the complainant, objects to the form of the question.

A. Yes, sir.

Q. Did not Mr. Edward F. Stockmeyer know that Mr. McCan

would not make any advances for the year 1884 unless Mr. Stockmeyer would give him prior over his, Mr. Stockmeyer's, mortgage?

A. Mr. McCan knew it.

Q. Did not Mr. Stockmeyer know it?

62 A. Well, these were the terms—these were Mr. McCan's terms to Mr. Stockmeyer, and I suppose he knew it.

Q. About what time did Mr. Stockmeyer inform you that he was unable to make advances for the year 1884?

A. About the last days of December or the first days of January.

Q. Do you remember the amount of interest paid to Mr. Stockmeyer by this draft that you drew on Mr. Charles P. McCan?

A. The check was made out to bearer. Mr. McCan made the check out to bearer.

Q. For what rate of interest on $30,000?

A. Six per cent.

Q. For what time?

A. For one year.

Q. Then it was about $1,800?

A. About that.

Q. Look at these two documents now marked by the notary "L" and "M."

A. Yes, sir; I know these documents. Mr. McCan refused to make us further advances before this document was signed—further advances for the year 1884.

Q. Were these two documents marked "L" and "M" signed by yourself and your brother?

A. Yes, sir; and the documents were sent to the plantation for my sisters to sign.

Q. State whether both these documents "L" and "M" were signed on or before the 27th September, 1884.

63 A. Yes, sir; Mr. McCan was on the David plantation at the time and we were on the Angelina, and these documents were brought to our sisters to sign; and after the same were signed there was a bearer waiting for it to deliver it to Mr. McCan on the David plantation.

Q. On what date?

A. On the same date—the 27th September, 1884.

Mr. Grant, solicitor for defendants, offers in evidence the exhibits marked "L" and "M."

Mr. Goldthwaite, solicitor for complainant, objects to the introduction of said documents L and M because the transaction referred to in the bill of complaint was between Edward F. Stockmeyer and Charles P. McCan and the other defendants and not between Edward F. Stockmeyer & Co. and the same parties, it being already shown by the testimony that Edward F. Stockmeyer was in the asylum as early as February, 1884, and long prior to the signature of these papers purporting to have been signed Edward F. Stockmeyer & Co.

Q. Are the signatures, Laura Godberry and Noelie Godberry, to this document genuine?

A. Yes, sir.

Mr. Grant, solicitor for defendants, offers in evidence the agreement at the foot of Exhibit "M," signed by Edward F. Stockmeyer & Co. and Laura Godberry and Noelie Godberry, and marked "N;" to which the same objection is made as above.

64 Mr. Goldthwaite, solicitor for complainant, admits that the signature of Edward F. Stockmeyer & Co. to the Exhibit "N" was signed by Carl Stockmeyer, a member of the firm of Edward F. Stockmeyer & Co.

Q. Did Mr. Edward F. Stockmeyer appear to understand what he was about when these transactions were being made?

A. Well, it was pretty hard to say; he seemed to be very anxious whether he knew what he was doing or not—he was very anxious.

Q. Did he converse rationally to you?

A. Well, he said he thought the matter was gone up for him, but he said he would do it.

Re-examined:

Q. At the time these papers referred to, marked L, M, and N, were signed where was Mr. Edward F. Stockmeyer?

A. Mr. Edward F. Stockmeyer was in New Orleans.

Q. Whereabouts in New Orleans?

A. That I don't know. I was not present when these were signed.

Q. Well, about that time did you know of his being in the Louisiana Retreat?

A. On September 27th?

Q. Yes.

A. No, sir.

Q. Do you know when Mr. Edward F. Stockmeyer was put into the asylum?

A. No, sir; I don't remember exactly the date.

Q. Did you not know, when these papers were drawn up
65 and signed, that Mr. Edward F. Stockmeyer was in the Louisiana Retreat at that time?

A. No, sir; he was not.

Q. He was not there?

A. No, sir.

Q. You must be careful. Do you not know that he was put into the Louisiana Retreat in February and these papers were not signed until September, 1884?

A. Yes, sir.

Q. Did you not know that he was in the Louisiana Retreat at the time these papers were signed?

A. At the time that he put his signature to these papers?

Q. At the time that these papers were signed by either parties he never signed any of these papers. But did you not know, at the time these papers were signed, that he was in the Louisiana Retreat?

A. No, sir; he was not in the Louisiana Retreat at that time.

Q. Where was Mr. Edward F. Stockmeyer in September, 1884?

A. Mr. Stockmeyer in September, 1884, was in the Louisiana Retreat.

Q. So you know he was there at that time?

A. Yes, sir.

Q. At the time that these papers were signed by your brother and your sisters had they any knowledge that Mr. Edward F. Stockmeyer was in the Louisiana Retreat?

A. When this paper, marked L, was signed they were aware of it.

66 Q. You testified that some $1,800 was paid as interest to Mr. Edward F. Stockmeyer about March, 1884?

A. Yes, sir.

Q. Do you know who gave him that check?

A. The check was given to me—a check to bearer—and I handed the check over to Mr. Edward F. Stockmeyer.

Q. You handed the check over to Mr. Edward F. Stockmeyer?

A. Yes, sir; the check was credited to us in Mr. Stockmeyer's account. The check was made to bearer.

Q. Was that check signed Charles P. McCan?

A. Yes, sir; stating the interest for the time and everything.

Q. And it was signed Charles P. McCan?

A. Yes, sir.

Q. And you turned that check over to Mr. Edward F. Stockmeyer?

A. Yes, sir; we drew the amount from Mr. McCan and paid it over to Mr. Edward F. Stockmeyer, because he said he would like to have the interest on the amount.

Q. Did Edward F. Stockmeyer know that you had gotten the money from Mr. McCan to pay that interest?

A. Yes, sir; he did.

Q. He knew that you had gotten it for that purpose?

A. Yes, sir.

Recross-examined by Mr. GRANT:

Q. Did not Mr. Charles P. McCan furnish your plantations with twenty mules?

67 A. Yes, sir.

Q. And charge them to you at $3,600?

A. Yes, sir; there were twenty mules bought.

Q. Were these mules on the plantation at the time of the sale by the sheriff?

A. Yes, sir; the mules were on the place.

Q. And sold with the place?

A. Yes, sir; sold with the place.

By Mr. GOLDTHWAITE:

Q. Were these mules sold in block with the plantation or sold separate?

A. They were sold in block with the plantation.

Q. Was the money deducted out of these advances which had been made by Mr. McCan for the payment of these mules?

A. From the proceeds of the crop of 1884?

Q. Were these advances which were furnished to you and for which you gave notes—advances from time to time—or did you get the money at the time you made the notes?

A. No, sir; it was advances drawn at different times.

Q. Was any money paid at all at the time you made the notes?

A. On the same day?

Q. Yes.

A. No, sir.

Q. Have you ever had any account made up between Charles P. McCan and Henry Godberry and George Godberry of the advances for 1884?

68 A. We only got an extract of account current. We never have had a full statement at all—that is, by debits and credits.

Q. No account has been stated to you?

A. No, sir; no general account has been given.

Q. Had any account been stated to you when this plantation was sold by executory process?

A. You mean a general account?

Q. Yes; I do.

A. No, sir; no general account.

(Signed) HENRY GODBERRY.

*Act of Sale, Marked Exhibit "A."*

STATE OF LOUISIANA,
*Parish of Orleans, City of New Orleans.*

Be it known that on this twentieth day of February, in the year of our Lord one thousand eight hundred and eighty and of the Independence of the United States of America the one hundred and fourth, before me, Nicholas Browse Trist, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned

69 and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Mrs. Angelina Roussel, widow of the late James W. Godbery, Sr., a resident of the parish of St. John the Baptist, in this State, who declared that for the price and upon the terms and conditions hereinafter expressed she does by these presents grant, bargain, sell, convey, transfer, assign, and set over, under all the warranties of law and with substitution and subrogation to all her rights and actions in warranty against any and all antecedent vendors or warrantors, unto Henry Godbery and George Godbery, both of the parish of St. John the Baptist, the first named being of lawful age and the last named a minor duly emancipated and relieved from all disabilities attached to minors, with full power to do and perform all acts as fully as if he had arrived at the age of twenty-one years, by judgment of the parish court of the parish of St. John the Baptist, the said Henry and George Godbery being both here present, accepting and purchasing for themselves, their heirs and assigns, in undivided

equal proportions to each, and acknowledging delivery and possession thereof, the following-described property, to wit:

A certain tract of land established as a sugar plantation, situated in the parish of St. John the Baptist, in this State, on the left bank of the Mississippi river at about forty-eight miles above the city of New Orleans, and composed of the following-described tracts, to wit:

1st. A tract measuring seventeen arpents, more or less, front
70 on the said river by forty arpents in depth, between opening lines, the upper fourteen arpents thereof having a double concession, bounded on the upper side by the tract which shall be hereinafter secondly described and on the lower line by the property of Estéve Marqueze, three undivided eighths of which were acquired by the late James W. Godberry, Sr., from the succession of the late Widow George Roussel on the 16th day of February, 1852, as it will appear by an act passed on the 29th day of March of same year before D. Forcelle, then recorder of said parish of St. John the Baptist, and five undivided eighths thereof from William P. Welham by act passed on the 27th of May, 1858, before J. P. Ferchand, recorder of the parish of St. James.

2d. Another tract measuring about one arpent and a half front on said river by forty arpents in depth, between opening lines, with a double concession, bounded above by the tract hereinafter fourthly described and below by the one herein firstly described, and which was acquired by the late James W. Godbery, Sr., from the succession of the late Antoine Dupuy on the 12th of December, 1857, as it will appear by an act passed on the 4th of March, 1858, before Adolphe Sorapuru, recorder of the parish of St. John the Baptist.

3rd. Another tract measuring one arpent front to the said river by forty arpents in depth, with a double concession, bounded above by the property of Eugene Chenet and below by the tract hereinafter fourthly described; and

4th. Another tract measuring one-half arpent front to the
71 river by forty arpents in depth, with a double concession, bounded above by the tract herein thirdly described and below by the one herein secondly described. The said two last-described tracts were acquired by the late James W. Godberry, Sr., from the succession of the late Marcelin Perilloux and wife on the 20th day of January, 1869, as it will appear by an act passed on the 19th of February of same year before George W. Combs, recorder of the parish of St. John the Baptist.

And also the following back lands, to wit, lot or section ninety-seven, in township eleven (east of the Mississippi river), of range six east, in the district of lands subject to sale at New Orleans, La., containing forty-five acres, and which were acquired by the late James W. Godberry, Sr., from Eugene Chenet, Jr., by act passed on the 7th of April, 1860, before Adolphe Sorapuru, then recorder of the parish of St. John the Baptist, together with all the buildings and improvements on said tracts of land, forming one plantation now known as the Angelina plantation; the machinery, engines, apparatus, carts, wagons, implements of husbandry, tools, mules and other live stock,

corn and fodder, the growing crops, and everything to said plantation belonging or appertaining without exception or reservation.

At the death of said James W. Godbery, Sr., the said Mrs. Angelina Godbery became the owner of the one undivided half of said property as his surviving widow and partner in community. Subsequently, by a decree rendered on the 13th day of June, 1871, by the parish court in and for the parish of St. John the Bap-
72 tist, five undivided twelfths thereof, being the shares of her minor children, Mary, Laura, George, Henry, and Noelie Godbery, therein, were adjudicated to her, and the remaining undivided twelfth was acquired by her, by purchase from James W. Godberry, Jr., by an act passed on the 28th day of April, 1871, before André Triche, then recorder of the parish of St. John the Baptist:

To have and to hold the said property and appurtenances unto the said purchasers, their heirs and assigns forever, by virtue hereof.

This sale is made and accepted for and in consideration of the price and sum of thirty-five thousand dollars, for which the said purchasers have furnished four several promissory notes, made by them to their own order and by themselves endorsed, dated this day, each for the sum of eight thousand seven hundred and fifty dollars, all payable one year after date, with interest, at the rate of six per cent. per annum, from date until paid, with privilege to the makers of extending the said notes from year to year for four years upon payment of interest.

Which notes numbered 1, 2, 3, and 4 were paraphed *ne varietur* by me, notary, for identification herewith and delivered to the said vendor, who acknowledges the receipt thereof.

And in case it shall become necessary to institute legal proceedings for the recovery of the amount of said notes or any part thereof the said purchasers bind themselves to pay the fees of the attorney-at-law who may be employed for that purpose and which are
73 hereby fixed at five per cent. of the amount due and sued for.

Now, in order to secure in principal and interest the full and final payment of the said notes, together with all costs, including the five per cent. attorney's fees hereinabove stipulated, the property herein described and conveyed is and shall remain specially mortgaged and affected by privilege in favor of the said vendor and of any future holders of said notes, the said purchasers hereby binding and obligating themselves, their heirs and assigns, not to sell, alienate, or encumber the said property to the prejudice of these presents.

By reference to the hereto-annexed certificate of the recorder of said parish of St. John the Baptist it will appear that the only mortgages now standing recorded in his office in the name of the present vendor and against said property *on* the following, to wit:

1st. The general one in favor of the minors, George, Henry, Mary, Laura, and Noelie Godbery, the issue of the late James W. Godberry, Sr., with the said Mrs. Angelina Roussel, resulting from the certificate of the clerk of court in and for said parish of St. John the Baptist, delivered on the 20th of February, 1871, and recorded on the 6th of March of same year in conformity with law.

2d. The special one, recorded on the 19th of June, 1871, and re-

sulting from a decree rendered on the 13th day of June, 1871, by the hon. the parish court in and for said parish of St. John the Baptist, adjudicating to the said Mrs. Widow James W. God-
74 bery, Sr., the shares of the above-named minors in and to the above-described property for the sum of forty thousand and six .64⅛ dollars, accruing collectively to the said minors, or the sum of eight thousand and one .20⅝ dollars to each of them, with interest at the rate of five per cent. per annum from the date of adjudication.

3rd. The special one, recorded on the same day as the one secondly above recited and resulting from the certificate of the clerk of court in and for said parish, delivered on the 19th of May, 1871, upon the second provisional account of administration and executorship, filed on the 13th of May, 1871, by Jas. W. Godbery, Jr., test'y exe'r, and by which it appears that the said Mrs. Widow James W. Godberry, Sr., received for the above-named minors the sum of ten thousand eight hundred and three .92½ dollars, or the sum of two thousand one hundred and sixty .78$\frac{5}{12}$ dollars for each of them.

4th. A lease of a lot of ground making part of said Angelina plantation and lying at the upper portion thereof, measuring one-half arpent in width by two arpents in depth, in favor of Louis Chenet for the term of five years from the 1st of January, 1879, for the sum of eighty dollars per year, subject to which lease the present sale is made and accepted.

And to these presents personally came and intervened Miss Laura Godbery, of lawful age; Miss Noelie Godbery, a minor duly emancipated and relieved from all disabilities attached to minors,
75 with full power to do and perform all acts as fully as if she had arrived at the age of twenty-one years, by decree of the parish court in and for said parish of St. John the Baptist, and James W. Godbery, Jr., who, together with the said two purchasers and the vendor herein, declared that they do hereby release and authorize the erasure of the general mortgage in their favor and recorded against said property resulting from the tutorship of said Mrs. Godbery, as in said mortgage certificate firstly recited; the special mortgage resulting from the adjudication to her of the share of her minor children in the community property, as in said certificate secondly described, and the special mortgages resulting from the receipt of money by her, as in said certificate thirdly described, and they furthermore authorize and empower the recorder of said parish of St. John the Baptist to erase and cancel said mortgages from the records of his office, the interest of the minor, Mary Godbery, now deceased, in the said mortgages being represented by her heirs-at-law, to wit, her mother, the said Mrs. Angelina Godbery; her brothers and sisters of the full blood, the said George, Henry, Laura, and Noelie Godbery, and her brother of the half blood, the said James W. Godbery, Jr.

All taxes, State and parish, on said property have been paid as said parties declare, and they warrant the undersigned notary against any penalty he may incur by reason of any back taxes being due

thereon. The purchasers, as a further consideration for the present sale, assume the payment of the taxes of 1879 due and
76 exigible during the current year, and they furthermore undertake to have a copy of the present act duly recorded in the office of the recorder of said parish of St. John the Baptist.

Thus done and passed in my office, at New Orleans, the day, month, and year first above written, in the presence of Paul Carambat and George Sauvé, competent witnesses, residing in this city, who hereunto sign their names with the appearers and me, notary, after reading of the whole.

(Original signed) ANGELINA GODBERY.
HENRY GODBERY.
GEORGE GODBERY.
LAURA GODBERY.
NOELIE GODBERY.
JAS. W. GODBERY, JR.

PAUL CARAMBAT.
GEORGE SAUVÉ.

N. B. TRIST, *Not. Pub.*

I hereby certify the above to be a true and correct copy of the original on file in my notarial records, as witness my official seal and signature. [SEAL.]

New Orleans, May 21st, 1885.

(Signed) N. B. TRIST, *Not. Pub.*

77 *Act of Pledge, Marked Exhibit B.*

STATE OF LOUISIANA, }
*Parish of Orleans, City of New Orleans.* }

Be it known that on this seventh day of February, in the year of our Lord one thousand eight hundred and eighty-one and of the Independence of the United States of America the one hundred and fifth, before me, Nicholas Browse Trist, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Miss Laura Godbery and Miss Noelie Godbery, both of the parish of St. John the Baptist, in this State, the first named being of lawful age and the last named being a minor, duly emancipated and relieved from all disabilities attached to minors, with full power to do and perform all acts as fully as if she had arrived at the age of twenty-one years, by judgment of the late parish court in and for said parish of St. John the Baptist, parties hereto of the first part, and Edward F. Stockmeyer, of this city, party hereto of the second part, who de-
78 clared that they have contracted and agreed and by these presents do contract and agree as follows:

Whereas Henry Godbery and George Godbery, brothers, of the parties of the first part, are indebted to said Stockmeyer in the sum of three thousand seven hundred and twenty-eight $\frac{52}{100}$ dollars, a

balance of account due on 15th January, 1881, for advances made by the latter to said Henry and George Godbery for the purpose of working and cultivating during the year 1880 their "Angelina plantation," situated in said parish of St. John the Baptist, on the left bank of the Mississippi river, about forty-eight miles above the city of New Orleans; and

Whereas the said Stockmeyer has agreed to make further advances to said Henry and George Godbery for the purpose of working and cultivating said plantation during the current year, 1881:

Now, therefore, the said parties of the first part declared that in order to secure to said Stockmeyer the payment of the balance of three thousand seven hundred and twenty-eight $\frac{52}{100}$ dollars due him as aforesaid by the said Henry and George Godbery, and also to secure any balance up to the sum of seven thousand five hundred dollars which may become due by the latter to said Stockmeyer for advances made by him during the current year over and above the proceeds of the crops of said plantation, together with all interest thereon, costs, charges, and lawyer's fees in case of suit for the collection of same, they do by these presents pledge and pawn to said Edward F. Stockmeyer, his heirs and assigns, the following promissory notes, to wit:

79 Two several promissory notes, made by said Henry and George Godbery to their own order and by themselves endorsed, dated February 20th, 1880, each for the sum of eight thousand seven hundred and fifty dollars, payable one year after date, with interest at the rate of six per cent. per annum from date until paid, with privilege to the makers of extending the said notes from year to year for four years upon payment of interest, which notes, numbered 3 and 4, are paraphed *ne varietur* by the undersigned, notary for identification with an act of same date with said notes by which their payment is secured by mortgage and vendor's privilege on said "Angelina plantation," more fully described in said act. The said pledgers are the owners, each, of one of said notes, which have been delivered to said Stockmeyer, who acknowledges the receipt of the same and accepts these presents for himself, his heirs and assigns.

And it is further agreed by and between the parties hereto that in the event of the failure of the said Henry and George Godbery to pay the balance now due or which they may hereafter owe as aforesaid to said Stockmeyer, and interest thereon, the latter is hereby authorized to take such legal proceedings as he may deem necessary to enforce payment of the notes herein pledged, or, without recourse to legal proceedings or the intervention of a court of justice, to cause the herein-described pledged notes to be disposed of for cash, at public or private sale, at his option, after ten days' notice of his intention to sell, to be given to the said parties of the first part, and to

80 appropriate and apply the proceeds of said sale to the payment of the balance now due and the one which may become due to him as aforesaid by said Henry and George Godbery, and to all interest, costs, and charges.

And the said Stockmeyer does hereby postpone the payment of

said balance of three thousand seven hundred and twenty-eight $\frac{52}{100}$ dollars to the first day of January, 1882.

Thus done and passed in my office, at New Orleans, the day, month, and year first above written, in the presence of Adolphe Demarest, Jr., and Herman Blanchard, competent witnesses, residing in this city, who hereunto sign their names with the appearers and me, said notary, after reading of the whole.

(Original signed) LAURA GODBERY.
NOELIE GODBERY.
ED. F. STOCKMEYER.

A. DEMAREST, JR.
HERMAN BLANCHARD.

N. B. TRIST, *Not. Pub.*

[SEAL.] I hereby certify the above to be a true copy of the original on file in my notarial records, as witness my official seal and signature on the 7th day of February, 1881.

(Signed) N. B. TRIST, *Not. Pub.*

*Act of Pledge, Marked Exhibit C.*

81 STATE OF LOUISIANA,
*Parish and City of New Orleans.*

Be it known that on this twenty-fifth day of January, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and eighth, before me, Andrew Hero, Jr., a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Miss Laura Godbery and Miss Noelie Godbery, residents of the parish of St. John the Baptist, in this State, who declared that whereas Messrs. Henry Godberry and George Godberry, of said parish of St. John the Baptist, are justly and truly indebted unto Edward F. Stockmeyer, of this city, in the sum of thirty-two thousand dollars or thereabouts for and on account of advances made and furnished by him to and for the use of the Angelina plantation unto said Messrs. Godbery belonging, situated in the parish of St. John the Baptist, in this State; and they, said appearers, are desirous of securing said Stockmeyer in the payment of said indebtedness in principal and interest:

Now, therefore, said Miss Laura Godberry and said Miss Noelie Godberry moreover declared that in order to secure unto said Edward F. Stockmeyer, his heirs and assigns, the full and punctual payment of the aforesaid indebtedness of thirty-two thousand
82 dollars or thereabouts, due and owing unto him by the said Messrs. Godberry, together with interest thereon at the rate of eight per. cent. per annum until paid, and all costs, charges, and expenses, including attorney's fees at five per cent. on the amount that may be sued for, the said Miss Laura Godberry and Miss Noelie Godberry do by these presents pledge, pawn, and deliver unto the

said Edward F. Stockmeyer, here present and accepting, two certain promissory notes for the sum of eight thousand seven hundred and fifty dollars each, drawn by said Henry Godberry and George Godberry to their own order and by themselves endorsed, dated at New Orleans, the twentieth day of February, eighteen hundred and eighty, and both made payable at one year after date, with interest thereon, at the rate of six per cent. per annum, from date until paid, and the privilege to the makers of extending the said notes from year to year upon payment of the interest, said notes being marked 3 and 4, and payment thereof being secured by special mortgage and vendor's privilege upon the Angelina plantation and appurtenances, situated in the parish of St. John the Baptist, in this State, by an act passed before N. B. Trist, a notary, in this city, on February 20, 1880.

And it is understood and agreed by and between said Misses Godberry and said Stockmeyer that in the event of the failure of the aforesaid Messrs. Henry Godberry and George Godberry to pay their indebtedness unto said Stockmeyer, his heirs and assigns, on or before the twenty-fifth day of January, eighteen hundred and eighty five, that said Stockmeyer is hereby authorized to take
83 such legal proceedings as he may deem necessary to enforce payment of the notes herein pledged; or, without recourse to legal proceedings or the intervention of a court of justice, to cause the herein-pledged notes to be disposed of for cash, at public or private sale, at the option of said Stockmeyer, after ten days' notice of his intention to sell shall have been first given to the said Messrs. Godberry, and to appropriate and apply the proceeds of said sale to the payment of any amount that may then be due and owing unto him, Stockmeyer, by and from said Messrs. Godberry on account of the dealings and transactions had with said Stockmeyer concerning said Angelina plantation.

The aforesaid notes have had all interest paid thereon up to the twentieth day of February ensuing, and were produced unto and paraphed by me, notary, for identification herewith.

And said Stockmeyer declared that he does hereby postpone the payment of the aforesaid indebtedness due unto him by the said Messrs. Godberry until the twenty-fifth day of January, A. D. eighteen hundred and eighty-five.

Thus done and passed at my office, in New Orleans aforesaid, in the presence of Messrs. John J. Ward and Achilles J. Ferran, competent witnesses, both of this city, who hereunto sign their names with said parties and me, notary, on the day and year aforesaid.

(Original signed) NOELIE GODBERY.
LAURA GODBERY.
ED. F. STOCKMEYER.

JNO. J. WARD.
A. J. FERRAN.

84 ANDREW HERO, Jr., *Not. Pub.*

A true copy of the original act on file and of record in my office.
New Orleans, Jan'y 26, 1884.

(Signed) ANDREW HERO, Jr., *Not. Pub.*

*Copy Mortgage and Crop Lien, Marked Exhibit "D."*

STATE OF LOUISIANA, }
*Parish of Orleans.* }

Be it known that on this twenty-fifth day of January, in the year of our Lord one thousand eight hundred and eighty-four, before me, Andrew Hero, Jr., a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally appeared Henry Godberry and George Godberry, residents of the parish of St. John the Baptist, in this State, who severally declared that, requiring to have goods and necessary supplies furnished and moneys actual advanced to be used for the purchase of necessary supplies and the payment of necessary expenses and
85 laborers to plant, cultivate, gather, save, and manufacture the crops of sugar, molasses, and other products to be made and raised or grown during the present year, eighteen hundred and eighty-four on the hereinafter-described plantation, situated in the parish of St. John the Baptist, in this State, known and designated as the Angelina plantation, they have contracted a loan of twenty-five thousand dollars of and from Charles P. McCan, of this city, and as evidence of said loan or indebtedness said Messrs. Godberry have made and subscribed five certain promissory notes for the sum of five thousand dollars each, drawn by them jointly and *in solido* to their own order and endorsed by themselves, dated at New Orleans on the day and date hereof and made payable at the New Orleans National Bank, in this city, on the fifteenth day of December, the twentieth day of December, and the twenty-seventh day of December, eighteen hundred and eighty-four, and the fifth day of January and the fifteenth day of January, eighteen hundred and eighty-five, respectively, after date, with interest at the rate of eight per cent. per annum from and after maturity; if not then paid, until final payment; which said notes, after having been paraphed by me, said notary, for identification herewith, were delivered unto said Charles P. McCan, who hereby acknowledges their receipt; and in order to secure the full and punctual payment of the aforedescribed promissory notes in principal and interest, as well as all interest that may accrue thereon, together with all costs, charges, commissions, and attorneys' fees hereinafter stipulated, the said Henry
86 Godberry and George Godberry, moreover, declared that they do by these presents specially mortgage, affect, and hypothecate unto and in favor of said Charles P. McCan, his heirs and assigns, as well as of any and all such person or persons who may hereafter become the future owner or owners of said notes or either of them, the following-described property, viz:

All and singular that certain tract of land or plantation, together with the buildings and improvements thereon, including the sugar-house, machinery, engines, boilers, fixtures, apparatus and appurtenances thereof, mules, wagons, carts, aratory implements, and all

articles of personal property thereto attached or used in the cultivation thereof, situated, lying, and being in the parish of St. John the Baptist, in this State, on the left bank of the Mississippi river, at about forty-eight miles above the city of New Orleans, and measuring, more or less, twenty arpents front on the Mississippi river by forty arpents in depth, with a double concession between opening lines, and bounded below by property now or formerly belonging unto Esteve Marqueze and above by property now or formerly belonging to E. Chenet.

Also those tracts or parcels of land situate in said parish of St. John the Baptist, in this State, lying or being in the rear of the above described tract of land and designated or described as follows: Lot or section No. ninety-seven, in township No. eleven (east of the Mississippi river), of range No. six east, containing forty-five acres.

Which said plantation and appurtenances are so to remain mortgaged and hypothecated until the full and final payment of
87 the aforesaid notes in capital and interest, the said Henry Godberry and George Godberry hereby binding themselves and their heirs not to alienate, deteriorate, nor encumber the same to the prejudice of these presents, which are accepted by said mortgagee.

And the said Messrs. Godberry further declared that they do by these presents bind and obligate themselves to cause all and singular the buildings and improvements on the aforedescribed property to be insured and kept insured against the risk of fire by one of the insurance companies of this city, in the sum of twenty thousand dollars, until the full and final payment of the aforedescribed notes, and to transfer and deliver unto the said mortgagee the policy or policies of such insurance or insurances; in default whereof said mortgagee and any and all holders of said notes is and are hereby authorized to cause such insurance or insurances to be made and effected at the cost, charge, and expense of the said mortgagors.

But this clause shall not be construed as obligatory on such holder or holders or as making them liable for any loss, damage, or injury which may result from the non-insurance of the said buildings.

And the said Messrs. Godberry further declared that they do by these presents consent, agree, and stipulate that in the event of the said notes or either of them not being punctually paid at maturity it shall be lawful for and they do hereby authorize the said mortgagee or any other holder or holders thereof to cause all and singular the property hereinbefore described and herein
88 mortgaged to be seized and sold under executory process (issued by any competent court), without appraisement, to the highest bidder, payable — cash, the said Messrs. Godberry herein expressly dispensing with all and every appraisement thereof and by these presents waiving and renouncing the benefit of appraisement and of all laws or parts of laws relative to the appraisement of movable or immovable effects, &c., seized and sold under executory or other legal process, and also confessing judgment in favor of

said mortgagee and such person or persons who may be the holder or holders of said notes for the full amount thereof, capital and interest, together with all costs, charges, and expenses whatsoever.

And the said Messrs. Godberry further declare that they do by these presents bind and obligate themselves and their heirs to pay and reimburse unto said mortgagee and such person or persons as may be the holder or holders of said notes all such lawyer's or attorney's fees, together with all such costs, charges, and expenses, as said mortgagee or any such holder or holders shall or may incur or pay in the event of the non-payment of said notes at maturity or in case it should be necessary to place the said notes or either of them in the hands of an attorney-at-law for adjustment, compromise, settlement, suit, or otherwise, or of any legal proceedings whatever becoming necessary or being instituted at any time for the protection or preservation of the rights and claims of said mortgagee or of any future holder or holders or owner or owners of said notes; said attorney's fees, however, to be fixed at ten per cent. on the amount so in suit.

89 And the said Messrs. Godberry further declared that they hereby confess judgment for the amount of said notes, with interest as aforesaid, and all costs, charges, expenses, and attorney's fees as aforesaid, waive citation and all legal delays, as well as all appeals and writs of error, this being their answer and acknowledgment of all indebtedness as aforesaid, and also a formal waiver of legal notices and right of appeal, hereby authorizing and empowering the holder or holders of said notes or either of them at once to enter judgment before any court of competent jurisdiction, without any citation or previous notice of any kind, on a mere production of an authentic copy of this act, for the whole or part of said indebtedness, attorney's fees, costs, charges, expenses, &c., as aforesaid, provided that execution shall be stayed until maturity of the notes sued on; also that in case a forced sale should become necessary from any cause whatever, whether from failure or inability to pay or otherwise, said Messrs. Godberry, by these presents, waive and acknowledge legal service of notice to pay, notice of seizure, notice to appoint an appraiser and to subdivide, as well as all legal delays, and consent to the immediate execution of the judgment which may have been entered, hereby promising that no injunction or process of law tending to delay a sale shall be resorted to by them or by any one holding under them, and renouncing such right or privilege.

And in order to more fully secure the punctual payment of all such advances and moneys advanced or to be advanced as aforesaid, costs, charges, expenses, commissions, and attorney's fees, and

90 of the aforesaid notes, in principal and interest, a special lien and mortgage or privilege is hereby granted and recognized for the full sum of fifty thousand dollars on any and all crop or crops of sugar and molasses that may be planted, grown, raised, and gathered or made and manufactured during the year eighteen hundred and eighty-four on the hereinbefore mentioned and described plantation, tracts, and parcels of land; and this in-

strument is hereby directed to be recorded, in order to preserve and make the same public, so as to operate and bear upon the crops of the year eighteen hundred and eighty-four grown and produced on the aforesaid plantation.

Furthermore, for the same purpose and for the same amount, the entire crop made and grown on the aforesaid plantation known as Angelina during the year eighteen hundred and eighty-four is hereby pledged and pawned unto the said Charles P. McCan, his heirs and assigns, and the said Messrs. Henry Godberry and George Godberry do hereby agree and consent that any and all laws of this State pertaining to privileges for supplies furnished or money advanced and used for the purchase of necessary supplies and the payment of necessary expenses, laborers, etc., to carry on a farm or plantation shall and do hereby expressly refer and have full force and effect, and also bind and obligate themselves to ship and consign the entire crop of sugar and molasses made, produced, and gathered on the hereinbefore mentioned and described plantation known as Angelina during the year eighteen hundred and eighty-four to the said mortgagee, in the city of New Orleans, whenever required or notified so to do by him or his assigns, in default
91 of which said mortgagee or his representatives or assigns are authorized at once to sequester the said crops or the proceeds thereof in whomsoever hands the same may be, regardless of any sale or transfer thereof, and to ship the same, if in kind, unto said McCan, who *are* empowered to sell the same at the current market prices and hold the net proceeds, after deduction of all costs, charges, expenses, commissions, and attorney's fees, which net proceeds shall stand in lieu of the property sequestered, the said Messrs. Godberry hereby waiving and relinquishing their right to bond and the delay granted therefor and consenting that the sequestration bond shall stand in place of the release bond required by law, and moreover agreeing that the sequestration shall issue and that judgment shall be entered at the option of the holder of said notes or either of them without notice or citation of any kind hereby expressly confessing judgment and waiving all notices and citations required by law and consenting that no appeal shall be taken from any of the proceedings or from the judgment entered, as also that no notice of any of the proceedings or of any judgment entered shall be required, this being their written answer and confession of judgment for the purposes herein stated.

It is further distinctly agreed and covenanted that should any part or portion of the crops thus pawned and pledged be shipped to any other house or be diverted in any other way, or should the said Messrs. Godberry refuse or neglect to ship when notified so to do, then and in that case the note given as aforesaid and all amounts due on open account shall become due, demandable, and exigible
92 at once, and the holder or holders thereof are hereby fully authorized and empowered to seize and sequester the crops or take out any other process they may think advisable against the same wherever found.

For that purpose the said Messrs. Godberry do hereby waive all

exceptions to jurisdiction, and by this their answer acknowledge and recognize jurisdiction of the court, before which process may be sued out for the purpose of subjecting such crops to the rights of the holder or holders of said note or open account, and confess judgment therefor so as to hold the said crops subject thereto.

And it is expressly agreed and understood by and between the parties hereto that the said mortgagee shall have the exclusive right to apply the net proceeds of sale of all products shipped and all payments of money made to him to the payment of any indebtedness which may be due now or which may hereafter become due to him by the said Messrs. Godberry upon open account or to the debt secured and intended to be secured by these presents according to his view of the exigency of the case; that such application may be made at such time and in such manner as said mortgagee may elect; that no application of such proceeds of sale or money to the payment of any debt in open account which may at any time be due to the said mortgagee by the said Messrs. Godberry shall impair, lessen, or prejudice the indebtedness evidenced by note and secured or intended to be secured by this instrument or the security herein and hereby provided therefor, and that said mortgagee shall have the full
93 and undisputed right to impute payments as he may determine to whatsoever debt may be due him by said Messrs. Godberry.

Now, to secure the faithful performance of each and of all of the foregoing obligations, the reimbursement and payment of attorney's fees, costs, charges, and expenses, interest and commissions aforesaid, and the reimbursement and payment of all premium or premiums as shall be paid by the said mortgagee or any holder or holders of the aforesaid notes in causing insurance to be effected on default of said mortgagor, as aforesaid, the said Messrs. Godberry by these presents further specially mortgage and hypothecate the hereinbefore-described plantation, crops, &c., unto and in favor of said mortgagee and all holders of said notes or either of them.

It is well and distinctly agreed and covenanted by the said Messrs. Godberry that said McCan shall be entitled to charge and expressly allowed two and a half per cent. commissions and one-half per cent. brokerage, besides the conventional interest of eight per cent. per annum (which is hereby agreed and consented to), for and on all advances which are made to said Messrs. Godberry or to said Angelina plantation in goods, wares, merchandise, money, or otherwise; and that the said McCan is further authorized to charge two and a half per cent. commissions and customary brokerage for accepting, endorsing, buying, and selling.

Also that said McCan is authorized to insure the crops of sugar and molasses when being manufactured, in store on the place, at such valuation as he may fix at the cost and charge of said
94 Messrs. Godberry, loss, if any, payable to himself; and moreover to insure all goods and produce to and from the said plantation at the customary rates of effecting such insurance; and for the services thus rendered and obtaining policies said McCan is

authorized to receive the scrip or accept the rebate allowed, if he prefers, and the same to retain as his own.

And said Messrs. Godberry moreover declared that they hereby waive and relinquish all rights and claims of homestead or exemption that may be reserved unto them by law, and do by these presents convey and transfer the same unto the said McCan or any future holder or holders of the herein-described notes in full and absolute ownership to guarantee the payment of said notes, with all costs, charges, expenses, interest, commissions, and attorney's fees as aforesaid; and the said Messrs. Godberry moreover waive and relinquish in favor of said McCan or any future holder or holders of said notes or of either of them all rights and privileges of going into bankruptcy or of using the insolvent or respite or bankrupt laws of the United States, of this State, or of any other State or county in which they may hereafter reside until the whole amount of the herein-stipulated indebtedness shall have been paid in full and extinguished, unless with the approval and consent of said mortgagee or of such person and persons as may be the future owner or owners of said notes, but this shall not debar the said mortgagees or such holder or holders of said notes from forcing said Messrs. Godberry or either of them into bankruptcy or insolvency should
95 said McCan or the holders of said notes elect so to do.

And here personally appeared and intervened herein Miss Laura Godberry and Miss Noelie Godberry, residents of said parish of St. John the Baptist, who, having read what is hereinbefore written, declared that they are the owners of two certain promissory notes for the sum of eight thousand seven hundred and fifty dollars each, marked, respectively, 3 and 4, drawn by said Henry Godberry and George Godberry to the order of and endorsed by themselves, dated at New Orleans, February 20, 1880, and payable at one year after date, with interest at the rate of six per cent. per annum from date until paid and the privilege to the drawers or makers thereof of extending the said notes from year to year upon payment of the interest, and payment of said notes being secured by special mortgage and vendor's privilege on the herein-described plantation under an act passed before said notary, Trist, on 20th February, 1880; and said Misses Godberry moreover declared that said notes and the mortgage and privilege aforesaid securing their payment shall be subordinate and inferior in rank to the mortgage and notes herein made, as well as to all claims and demands of said McCan that may become due unto him by said Henry Godberry and George Godberry for and on account of advances in money or supplies that said McCan may make or furnish to them during the current year over and above the proceeds of the crops of said plantation, and that in case of any sale of the herein-described plantation and appurtenances under judicial process or any other cause whatsoever the claims
96 and demands of said McCan shall be paid and discharged out of the proceeds arising from such sale in preference and without regard to the aforedescribed notes held and owned by them, which are hereby subordinated or made inferior in rank and privilege to the claims and demands of said McCan.

And here appeared Edward F. Stockmeyer, of this city, who, having read what is hereinbefore written, declared and said that said Messrs. Godberry are indebted unto him in the sum of thirty-two thousand dollars, payable on the twenty-fifth of January, 1885, for and on account of advances made and furnished by him unto said Messrs. Godberry and the aforesaid Angelina plantation, and he consents and agrees that his claims and demands therefor shall be subordinate to the mortgage and notes herein granted, as well as any claims and demands that may become due unto said McCan by said Messrs. Godberry for and on account of advances in moneys and supplies that said McCan may make and furnish them during the present year over and above the proceeds of the crops of said Angelina plantation, and that in case of any sale of the herein-described plantation and appurtenances under any judicial proceedings or otherwise the amount that may be due said McCan shall be paid in preference and without regard to the claims or indebtedness due him and Stockmeyer.

And here said parties declared that they dispense with the production of a certificate of mortgage for annexation hereto, as is otherwise required by law.

Thus done and passed, in my office, in New Orleans aforesaid, in the presence of John J. Ward and Achilles J. Ferran, witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, the day and date aforesaid.

97

(Original signed) NOELIE GODBERRY.
LAURA GODBERRY.
GEO. GODBERRY.
HENRY GODBERRY.
ED. F. STOCKMEYER.
C. P. McCAN.
ANDREW HERO, JR., *Not. Pub.*

JNO. J. WARD.
A. J. FERRAN.

I hereby certify this to be a true and correct copy of the original act on file and of record in the office of Andrew Hero, Jr., now absent on leave.

New Orleans, Sept. 24, 1884.

(Signed) W. J. CASTELL,
*Not. Pub., Herein Representing A. Hero, Jr., Not. Pub., Absent on Leave.*

*Sheriff's Deed, Marked Exhibit "E."*

STATE OF LOUISIANA:

Twenty-sixth Judicial District Court, Parish of St. John the Baptist.

98 CHARLES P. McCAN
*versus*
HENRY GODBERY and GEORGE GODBERY. } No. 197.

Whereas I, John Webre, sheriff of the parish of St. John the Baptist, duly commissioned and qualified in and for the aforesaid parish, by virtue of a writ of seizure and sale to me directed by the honorable the twenty-sixth judicial district court of Louisiana in and for the parish of St. John the Baptist, in the matter of Charles P. McCann *versus* Henry Godbery and George Godbery, No. 197 of the docket of said court, after having fulfilled and complied with all the previous legal requisites, did seize the following-described property, to wit: All and singular that certain tract of land or plantation, together with all the buildings and improvements thereon, including the sugar-house, machinery, engines, boilers, fixtures, apparatus, and appurtenances thereof, mules, carts, wagons, aratory implements, and all articles of personal property thereto attached or used in the cultivation thereof, situated, lying, and being in the parish of St. John the Baptist, in this State, on the left bank of the Mississippi river, at about forty-eight miles above the city of New Orleans, and measuring, more or less, twenty arpents front on the Mississippi river by forty arpents in depth, with a double concession between opening lines, and bounded below by property now or formerly belonging unto Esteve Marqueze and above by the
99 property now or formerly belonging to E. Chenet.

As also those tracts of land or parcels of land situate in said parish of St. John the Baptist, in this State, lying or being in the rear of the above-described tract of land, and designated or described as follows: Lot or section No. ninety-seven, in township No. eleven (east of the Mississippi river), of range No. six east, containing forty-five acres.

And, after having given due and legal notice to the said Henry Godbery and George Godbery of said seizure in the manner pointed out by law, I advertised the said before-described property for sale after the expiration of the legal delay from the time of said notice, to wit, on the thirty-first day of January, 1885, by advertisement, composed in English, announcing the sale to take place at the court-house of this parish, on the seventh day of March, 1885, at eleven o'clock a. m.; said advertisements inserted and published in English in the "Meschacébé," the official journal of the parish of St. John the Baptist, from the said 31st day of January, 1885, to the day of sale, being full thirty days from the date of the first notice given in said official journal on the 31st day of January, seventh, fourteenth, twenty-first, twenty-eighth days of February, and on the seventh day of March, 1885.

And, having further complied with and performed all the additional previous legal requisites, did expose the same at public sale, at auction, according to law, at the court-house of this parish, on the said seventh day of March, 1885, at eleven o'clock a. m., and
100 at the time and place of sale I did first announce in a loud and audible voice the terms and conditions of sale, and having also read *verbatim* and in a loud and audible voice the certificate of the clerk of court, *ex officio* recorder of mortgages for the parish of St. John the Baptist, delivered to me on the day of sale, and by which certificate it appears there are no other mortgages standing in the name of Henry Godbery and George Godbery and recorded against the before-described property than the following, to wit:

First. The conventional mortgage recorded February 27th, 1880, and that by act passed on the 20th day of same month, before N. B. Trist, notary public in and for the parish of Orleans, they, the said George Godbery and Henry Godbery, granted in favor of Mistress Widow James W. Godbery, Sr., to secure the payment of two promissory notes for the sum of eight thousand seven hundred and fifty dollars, dated February 20th, 1880, made by them to their own order and by themselves endorsed, and both made payable one year after date, with interest, at the rate of six per cent. per annum, from date until final payment, with privilege to the makers of extending the said notes from year to year for five years upon payment of interest, and also to secure attorney's fees at five per cent. on the amount due and sued for in case of suit to recover the amount of the said notes or of any part thereof.

Second. The conventional mortgage recorded January 28th, 1884, and that by act passed on the 25th day of same month, before Andrew Hero, Jr., notary public in and for the parish of Orleans, they, the said George Godberry and Henry Godbery, granted in
101 favor of Charles P. McCan, to secure the payment of five promissory notes for the sum of five thousand dollars each, drawn by them jointly and *in solido* to their own order and endorsed by themselves, dated New Orleans, January 25th, 1884, and made payable at the New Orleans National Bank, in the city of New Orleans, on the fifteenth day of December, the twentieth day of December, the twenty-seventh day of December, eighteen hundred and eighty-four, and the fifth day of January, eighteen hundred and eighty-five, respectively, after date, with interest at the rate of eight per cent. per annum from and after maturity; if not then paid, until final payment; and also to secure the payment of attorney's fees at ten per cent. on the amount due and sued for, and of all such other costs, charges, and expenses as shall be incurred or paid in the event of a suit to enforce the payment of the said notes or of either of them or of any part thereof; and also the payment and reimbursement of all premium or premiums as shall be paid by any holder or holders of the said notes in causing insurance to be effected on the buildings and improvements of the above-described property in default on the part of the said George and Henry Godbery so to do, as they bound themselves in the aforesaid act of January 25th, 1884.

And in said act of January 20th, 1884, before Andrew Hero, Jr., notary, personally intervened Miss Laura Godbery and Miss Noelie Godbery, of this parish, who declared that they were the holders and owners of the two notes for the sum of $8,750.00 each, mentioned in the mortgage hereinabove firstly related, and
102 that the said notes and the mortgage and privilege securing their payment shall be subordinate and inferior in rank to the mortgage and notes made and granted by the aforesaid act of January 20th, 1884, in favor of said Charles P. McCan, and that in case of any sale of the aforesaid plantation and appurtenances under judicial process or any cause whatsoever the claims and demands of the said McCan shall be paid and discharged out of the proceeds arising from such sale in preference and without regard to the above-described notes held and owned by them.

Third. The legal mortgage in favor of the State of Louisiana and the parish of St. John the Baptist for the amount of State and parish taxes for the year 1884 and all interests and costs *and* resulting from the filing in my office on the 19th day of August, 1884, of the assessment-rolls of taxable property of this parish for said year 1884.

I do also certify that the only privilege standing recorded in the names of the said George Godbery and Henry Godbery and against and on certain carts and other objects on and attached to the aforesaid plantation is the one recorded on the 13th day of August, 1884, in favor of Adelaid Millet for the sum of three hundred and twenty dollars and thirty cents.

And I do also hereby certify that on the 3rd March, 1880, there was registered in this office, in Book "F" (N. S.) of Conveyances, pages 92 and 93, an act passed on the 20th of February, 1880, before N. B. Trist, a notary public in and for the parish of Orleans,
103 and by which the said George Godbery and Henry Godbery gave and allowed to their mother, Mrs. Angelina Roussel, widow James W. Godbery, Sr., for the term of her lifetime or as long as they are the owners thereof, the right to use and inhabit jointly with them the dwelling-house on the aforesaid and above-described plantation.

When Charles P. McCan, being the highest and last bidder, the said before-described property, with all its appurtenances, was adjudicated to the said Charles P. McCan for the price and sum of fifteen thousand dollars, which amount the said Charles P. McCan has paid me cash.

Now, know all men by these presents that I, John Webre, the said sheriff, in consideration of the premises and by virtue of the laws of the State of Louisiana in such cases made and provided, do sell, transfer, and set over the said above-described property to the said Charles P. McCan and all the rights and title which the said George Godbery and Henry Godbery had in or to the before-described property; to have and to hold the same to the said Charles P. McCan, his heirs or assigns forever.

In witness whereof I have hereunto signed my name, at the parish of St. John the Baptist, in the State of Louisiana, on this the seventh

day of March, one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and ninth.

(Signed) JOHN WEBRE, *Sheriff*,
Per T. VOISIN,
*Chief Deputy.*

In presence of—
(Signed) ALEXANDER STEWART.
ERNEST SENTILLE.

104 Registered March 10th, A. D. 1885.
(Signed) ERNEST SENTILLE,
*D'y Cl'k C't and ex Officio D'y Recorder.*

STATE OF LOUISIANA:

Clerk's Office, Parish of St. John the Baptist.

I, the undersigned, clerk of court and *ex officio* recorder, duly commissioned and qualified, in and for the parish of St. John the Baptist aforesaid, do hereby certify the above and foregoing to be a true and correct transcription from Book G (N. S.) of Conveyances, pages 429, 430, and 431, and from "Sheriff's Deeds" Book, vol. II, pages 331, 332, 333, 334, 335, and 336, of this office.

In faith whereof I have hereunto set my hand and affixed my seal of office, at the parish of St. John the Baptist aforesaid, on this the 18th day of May A. D. 1885.

(Signed) ZÉNON MILLET,
[SEAL] *Clerk of the Court and ex Officio Recorder.*

*Copy of Petition and Protest, Marked Exhibit F.*

105 In the Matter of CHARLES P. McCAN
*vs.*
GEORGE GODBERY and HENRY GODBERY. } No. 197.

To the honorable the judge of the twenty-sixth judicial district court of the State of Louisiana in and for the parish of St. John the Baptist, La:

The joint petition of George Godbery and of Henry Godbery, residing in said parish and State, respectfully represents—

That petitioners are the defendants and seized debtors in the above-entitled executory proceeding of Charles P. McCan *vs.* George Godbery and Henry Godbery, No. 197 on the docket of this honorable court, in which proceeding the said plaintiff has sued out and obtained from this court a writ of seizure and sale, directed to the sheriff of the parish of St. John the Baptist, in execution of which writ of seizure and sale the said sheriff has seized and taken into his possession and will offer for sale, at public auction, on Saturday, the 7th day of March, 1885, at the door of the court-house of said parish, for cash, the property described in the following advertisement of said sale, which is hereto annexed, inserted, and made part of this petition:

*Sheriff's Sale.*

STATE OF LOUISIANA:

Twenty-sixth Judicial District Court, Parish of St. John the Baptist.

106 CHARLES P. McCAN
*vs.*
GEORGE GODBERY and HENRY GODBERY. } No. 197.

By virtue of a writ of seizure and sale issued by the honorable the twenty-sixth judicial district court of Louisiana in and for the parish of St. John the Baptist in the above entitled and numbered suit and to me directed, I will offer for sale, at public auction and for cash, on Saturday, the 7th day of March, 1885, at the hour of eleven o'clock a. m., at the court-house of this parish, the following described property, to wit:

All and singular that certain tract of land or plantation, together with the buildings and improvements thereon, including the sugar-house, machinery, engines, boilers, fixtures, apparatus and appurtenances thereof, mules, wagons, carts, aratory implements, and all articles of personal property thereto attached or used in the cultivation thereof, situated, lying, and being in the parish of St. John the Baptist, in this State, on the left bank of the Mississippi river, at about forty-eight miles above the city of New Orleans, and measuring, more or less, twenty arpents front on the Mississippi river by forty arpents in depth, with a double concession between opening lines, and bounded below by property now or formerly belonging unto Estéve Marqueze and above by property now or formerly
107 belonging to E. Chenet; as also those tracts of land or parcels of land situated in said parish of St. John the Baptist, in this State, lying or being in the rear of the above-described tract of land and designated or described as follows: Lot or section No. 97, in township No. eleven (east of the Mississippi river), of range No. six east, containing forty-five acres.

Also—
51 mules.
2 horses.
6 sheep.
140-horse-power upright engine.
1 Ames 8-horse portable engine.
1 Shakspear water elevator.
32 No. 2 plows.
7 No. 4 plows.
2 rotary hoes.
1 thrasher.
1 12-inch pump.
Hoes, subsoil plows, reaper.
25 sets of gearings.
10 large carts.
2 small carts.

1 cotton-seed distributor, and lots of other agricultural implements too numerous to mention and fully enumerated in the inventory on file in my office.

Seized in the above suit.

Terms cash.

JOHN WEBRE, *Sheriff.*

108 Now, your petitioners represent that, as regards the above-described animals, utensils, mules, horses, sheep, engines, plows, agricultural implements attached to said plantation and seized as aforesaid, the sale of said animals, mules, must be made on the said plantation, *and* that being the spot where they were taken and seized with said plantation as thereto attached, and that said animals, utensils, &c., cannot be sold at the court-house of said parish, as such a sale would be violative *to* article 666 of the Code of Practice, which declares that "animals and utensils attached to plantations and manufactures and such articles as cannot be easily removed must be sold on the spot where they are taken on the day and hour appointed for that purpose by the sheriff."

That petitioners hereby solemnly protest against said mules, animals, horses, sheep, engines being sold in block at the court-house, as advertised, but demand that said mules, horses, cattle, sheep be separately appraised and be separately sold on the spot where they are taken—that is to say, on said plantation.

That a sale in block of all said property would seriously and materially injure your petitioners, whereas a sale as hereinafter suggested will produce a large amount of money in satisfaction of said writ and in contribution to the payment of the secured mortgage on said property in favor of —— Stockmeyer.

That petitioners, availing themselves of the right given them by article 676 of the Code of Practice, do hereby require that all the property above seized be appraised separately with such
109 minuteness that they be sold separately as follows, to wit:

Firstly. The said plantation to be sold at the court-house.

Secondly. The mules to be each appraised separately and to be sold on the plantation.

Thirdly. The horses ditto.

Fourthly. The carts ditto.

Fifthly. The two engines ditto.

Sixthly. The plows ditto.

Seventhly. The balance of said articles to be separately appraised, and so sold in the order mentioned in said advertisement.

Wherefore petitioners hereby protest against all said property being sold in block or in lump, and further protest against the sale at the court-house of the said mules, horses, sheep, engines, elevator, plows, hoes, thrasher, pump, gearings, carts, cotton-seed distributor, and therefore and herein pray that said sheriff be ordered to offer said property for sale and cause the same to be appraised separately on the said plantation in the order above prescribed by your petitioners after the sale of said plantation at the court-house.

That said sheriff be served with a copy of this petition, protest, and the order thereon.

And for all general relief.

For James Legendre and self.

(Signed) ST. M. BERAULT,
*Of Counsel for Pet'rs.*

110 St. M. Berault, of counsel for petitioners, after having been duly sworn, says that the office of the judge of the 26th judicial district court of Louisiana is now vacant, and that there is now no judge in said district and in the parish of St. John the Baptist to act in said judicial office, and that the judge of the adjoining district, the 22d judicial district of La., is authorized to act in that event.

(Signed) ST. M. BERAULT.

Sworn to and subscribed before me, the undersigned authority, this 4th March, 1885.

[L. S.] (Signed) CHAS. T. SONIAT, *Not. Pub.*

*Order.*

Upon reading the foregoing petition and considering articles 666 and 676 of the Code of Practice let the sheriff of the parish of St. John the Baptist be, and he is hereby, directed and instructed to sell the property described in the foregoing petition in the order and manner set forth therein, and let the same be sold separately and appraised separately as above set forth and prayed in said petition, the plantation to be sold first at the court-house and the other articles on the plantation as prayed for.

At chambers, 4th March, 1885.

(Signed) HENRY L. DUFFEL, *Judge.*

A true copy of the original on file and of record in this office.
Clerk's office, parish of St. John the Baptist, May 18th, A. D. 1885.

[SEAL.] (Signed) ZÉNON MILLET,
*Clerk of Court.*

111 *Protest of Carl Stockmeyer, Marked Exhibit G.*

In the 26th Judicial District Court of Louisiana in and for the Parish of Saint John the Baptist, La.

CHARLES P. McCAN
*vs.*
GEORGE GODBERY and HENRY GODBERY. } No. 197.

To Charles P. McCan and John Webre, sheriff of the parish of Saint John the Baptist, Louisiana:

You and each of you are hereby notified and will take notice that Carl Stockmeyer, residing in the city of New Orleans and herein acting as the duly appointed and qualified curator of Edward F.

Stockmeyer, interdict, does hereby protest against the sale of the property seized in the above entitled and numbered executory proceedings and offered for sale by said sheriff in said parish on Saturday, the 7th day of March, 1885, being made without all said property being duly and separately appraised according to law before the said property or any part thereof is offered for sale in said suit and proceeding No. 197; and said curator does further protest against said property being offered for sale and adjudicated in block in said suit No. 197; and said curator of said interdict bases his said protest in the premises on the following grounds, to wit: That said curator of said interdict, Edward F. Stockmeyer, is the holder and owner, as pledgee, of two certain promissory notes for the
112 sum of $8,750.00 each, drawn by Henry Godbery and George Godbery to their own order and by themselves endorsed, dated at New Orleans the 20th February, 1880, and both made payable at one year after date, with interest thereon at the rate of six per cent. per annum from date until paid, and the privilege to the makers of extending the said notes from year to year upon payment of the interest, said notes being marked 3 and 4 and payment thereof being secured by special mortgage and vendor's privilege upon the Angelina plantation and appurtenances, situated in the parish of St. John the Baptist, in this State, by an act passed before N. B. Trist, a notary public in the city of New Orleans, on the 20th February, 1880, said Angelina plantation and appurtenances being the same property and appurtenances seized and offered for sale by said sheriff in said suit No. 197; that said vendor's privilege and said special mortgage securing said two notes and interest were duly inscribed in the registry of mortgages in the parish of St. John the Baptist, La., on the — day of ——, 1880; that by act passed on the 25th January, 1884, before Andrew Hero, Jr., a notary public in and for the parish of Orleans, State of Louisiana, Miss Laura Godbery and Miss Noelie Godbery pledged said two notes of $8,750.00 each, with interest aforesaid, and secured by said vendor's privilege and special mortgage for the purpose of securing to the said Edward F. Stockmeyer the payment of a sum of thirty-two thousand dollars due and owing by Henry Godbery and George Godbery to said Edward F. Stockmeyer, as will be more fully seen by reference to said act of pledge passed as aforesaid.

113 That though the said Misses Laura and Noelie Godbery and said Edward F. Stockmeyer appeared and intervened in the act passed on the 25th day of January, 1884, before Andrew Hero, Jr., notary aforesaid, by which said Henry Godbery and George Godbery mortgaged, in favor of the said Charles P. McCan, the said Angelina plantation and appurtenances, they, the said Misses Laura and Noelie Godbery and said Edward F. Stockmeyer, did so intervene in said act, each separately and distinctly, for the sole and exclusive purpose of subordinating their vendor's privilege and special mortgage on said Angelina plantation to the special mortgage and crop lien granted by said act, by said Henry and George Godbery, to said Charles P. McCan.

That said Misses Laura and Noelie Godbery and said Edward F.

Stockmeyer never consented to any waiver whatever of appraisement of said plantation and appurtenances, &c., in the sale thereof in the foreclosure of said mortgage in favor of said McCan in said suit No. 197; that said Henry and George Godbery could not renounce their right to an appraisement of said property and could not consent to the forced sale thereof without appraisement, to the detriment and injury of the vendor's privilege and special mortgage on said property securing the payment of said two notes of $8,750.00, with interest aforesaid, pledged as aforesaid; that said last act of the 25th January, 1884, is governed by article 2078 (2073) of the Revised Civil Code of Louisiana, and that the obligations therein created are individual, distinct, and separate, as if they had been in
114 different contracts and made at different times; that said property seized and offered for sale in said suit No 197 will, if offered separately for sale, subject to the appraisement prescribed by law, *will* bring, in the aggregate, a price and sum more than sufficient to pay the claim of said McCan, and sufficient to pay something as a surplus on account of said vendor's privilege and special mortgage securing said two notes of $8,750 each, held in pledge by said Stockmeyer as aforesaid.

Wherefore the said curator, in the protection of the interests of said interdict, Edward F. Stockmeyer, protests against the sale of said property without the benefit of appraisement and claims that the said property be sold subject to a legal appraisement and in the mode and manner claimed by said Henry and George Godbery in their petition filed on the — day of March, 1885, in the said district court in said suit No. 197; and said curator reserves all other rights and objections to and in the premises.

New Orleans, 6th March, 1885.

(Signed) JAMES LEGENDRE,
" ST. M. BERAULT,
*Attorneys for Curator.*

STATE OF LOUISIANA, SHERIFF'S OFFICE,
PARISH OF ST. JOHN THE BAPTIST.

I, the undersigned, do hereby certify the above and foregoing to be a true and correct copy of the original on file in this office.
115 Sheriff's office, parish of St. John the Baptist, May 18th, A. D. 1885.

(Signed) T. VOISIN,
*Ch'f D'y Sheriff, — St. John the Baptist.*

I, the undersigned clerk of court in and for the parish of St. John the Baptist, La., duly commissioned and qualified, do hereby certify that Terence Voisin, whose signature is affixed to the above document, is and was at the time of signing same the duly appointed and qualified chief deputy sheriff in and for this parish, and that his said signature is true and genuine.

In faith whereof witness my official signature and seal, at the

parish of St. John the Baptist aforesaid, on this the 18th day of May, A. D. 1885.

[SEAL.] (Signed) ZÉNON MILLET,
*Clerk of Court.*

*Notes Marked Exhibits H and J.*

EXHIBIT H.

$8,750.00. NEW ORLEANS, *February 20th*, 1885.

One year after date we promise to pay to the order of our-
116 selves eight thousand seven hundred and fifty $\frac{}{100}$ dollars, value received, with interest at the rate of six per cent. per annum from date until paid, with privilege of extending from year to year for four years upon payment of interest.

(Signed) HENRY GODBERY.
GEORGE GODBERY.

Inscribed on face of note:

*Ne varietur.* Secured by mortgage and vendor's privilege by act passed before me this day. New Orleans, February 20, 1880. (Signed) N. B. Trist, not. pub.

*Ne varietur.* New Orleans, Jan'y 25, 1884. (Signed) Andrew Hero, Jr., not. pub.

Endorsed: (Signed) Henry Godbery, George Godbery. Interest payed to Feb. 20, 1884.

EXHIBIT J.

117 $8,750.00. NEW ORLEANS, *February* 20, 1880.

One year after date we promise to pay to the order of ourselves eight thousand seven hundred and fifty $\frac{}{100}$ dollars, value received, with interest at the rate of six per cent. per annum from date until paid, with privilege of extending from year to year for four years upon payment of interest.

(Signed) HENRY GODBERY.
GEORGE GODBERY.

Inscribed on face of note:

*Ne varietur.* Secured by mortgage and vendor's privilege by act passed before me this day. New Orleans, February 20, 1880. (Signed) N. B. Trist, not. pub.

*Ne varietur.* New Orleans, January 25, 1884. (Signed) Andrew Hero, Jr., not. pub.

Endorsed: (Signed) Henry Godbery, George Godbery. Interest paid to Feb. 20th, 1884.

118 *Copy Petition, etc., Marked Exhibit K.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

Interdiction of EDWARD F. STOCKMEYER. No. 12315. C'l D't C't, Div. "B."

Petition. Filed October 13th, 1884.

To the honorable the judges of the civil district court for the parish of Orleans:

The petition of Carl Stockmeyer, who resides in the city of New Orleans, respectfully represents—

That Edward Frederick Stockmeyer, the uncle of your petitioner, who resides in the city of New Orleans, has for several months past been insane, and has been and still is entirely unable and incapable of taking care of his person or property, and has, since the 20th February, 1884, been in the Louisiana Retreat, an insane asylum, that he might receive proper care and medical attention.

That said Edward Frederick Stockmeyer has interest and property in this parish, particularly in the firm of E. F. Stockmeyer & Co., of which he is a member with your petitioner, and it is
119 necessary that a provisional curator be appointed to said party, and after his interdiction, which should be decreed, that a curator and under curator be appointed according to law.

Wherefore he prays that said Edward Frederick Stockmeyer be cited to answer hereto; that an attorney be appointed to represent said party; that petitioner be appointed provisional administrator and curator; that after due proceedings said Edward Frederick Stockmeyer be decreed insane and judgment of interdiction be rendered according to law; that petitioner be appointed curator to the person and estate of said interdict, and that — be appointed under curator; that an inventory be ordered to be taken before Mark Breeden, Jr., notary, and for all further orders that may be necessary and proper in the premises, and for all general relief.

(Signed) JOSEPH P. HORNER,
(Signed) FRANCIS W. BAKER, *Att'ys.*

*Affidavit.*

Carl Stockmeyer, being duly sworn, deposes and says that all the facts and allegations in the foregoing petition are true and correct.

(Signed) C. STOCKMEYER.

Sworn to and subscribed before me this 13th day of October, A. D. 1884.

(Signed) N. B. TRIST, *Not. Pub.*

120 *Order.*

Let Charles Louque, Esq., attorney-at-law, be appointed as attorney

to represent and defend the defendant, Edward Frederick Stockmeyer, herein, and let Doctors A. W. Smythe, J. E. Fitch, and E. T. Shepard be appointed as physicians and experts to examine the mental condition of the defendant, Edward F. Stockmeyer, and to report thereon to this court.

(Signed) W. T. HOUSTON, *Judge.*

New Orleans, October 13th, 1884.

Judge civil district court for the parish of Orleans, division B, sitting in place of Hon. F. A. Monroe, judge of said court, division C, now absent on leave.

*Citation, October 14th,* 1884.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

Interdiction of EDWARD F. STOCKMEYER. No. 12315.

Mr. Edward F. Stockmeyer, through his attorney, Charles Louque, Esq.:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation or deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans within ten days
121 after the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 14th day of October, in the year of our Lord 1884.

(Signed) JULES VIENNE,
*Deputy Clerk.*

*Return on Citation.*

Received October 14th, 1884, and on the 17th day of October, 1884, I served a copy of the within citation and accompanying petition on Edward F. Stockmeyer by personal service on Chas. Louque, his attorney.

Returned same day.

(Signed) P. A. McINTYRE, *Dep. Sh'ff.*

*Letters. Filed October 16th,* 1884.

Interdiction of EDWARD F. STOCKMEYER. No. 12315.

Civil District Court for the Parish of Orleans, Division "C."

STATE OF LOUISIANA:

This shall certify to all whom it may concern that on the thirteenth day of October, in the year of our Lord one thousand eight hundred and eighty-four, and the hundred and ninth of the Inde-

pendence of the United States of America, an application was made to the Honorable F. A. Monroe, judge of the civil district
122 court for the parish of Orleans, division C, by Carl Stockmeyer praying that he might be appointed liquidator of the firm of Edward F. Stockmeyer & Co.

Now, know ye that Carl Stockmeyer has been, and he is hereby, appointed liquidator of the said firm of Edward F. Stockmeyer & Co., and that he has fulfilled all the requisites of the law.

Witness our hand and the seal of the said civil district court this 16th day of October, in the year of our Lord one thousand eight hundred and eighty-four, and in the 109th of the Independence of the United States.

(Signed) W. T. HOUSTON, *Judge.*

Judge civil district court for the parish of Orleans, division "B," sitting in place of Hon. F. A. Monroe, judge of said court, division "C," now absent on leave.

(Signed) JULES VIENNE, *D'y Cl'k.*

*Report of Doctors. Filed October* 25, 1884.

NEW ORLEANS, *Oct.* 22*d*, 1884.

To the Hon. W. T. Houston, judge of div. B, civil dist. court, parish of Orleans, La.:

We, the undersigned, appointed by you to examine the mental condition of Edward F. Stockmeyer, at present an inmate of the Louisiana Retreat for the Insane, in this city, do respectfully
123 state and aver that after careful and repeated examinations we find said Edward F. Stockmeyer to be insane (melancholia with delusion), and that he is by reason of his mental alienation unable to take care of his person and unfitted to manage and have the care of his affairs.

(Signed) E. T. SHEPARD, M. D.
(Signed) A. W. SMYTHE, M. D.
(Signed) J. E. FITCH, M. D.

*Citation, October* 28*th*, 1884.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

Interdiction of EDWARD F. STOCKMEYER. No. 12315.

To Edward F. Stockmeyer:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation or deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans within ten days after the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe,

N. H. Rightor, Henry L. Lazarus, judges of the said court, this 28th day of October, in the year of our Lord 1884.

(Signed) JULES VIENNE,
*Deputy Clerk.*

124 *Return on Citation.*

Received October 28th, 1884, and on the 29th day of October, 1884, served a copy of the within citation and accompanying petition on Edward F. Stockmeyer, herein named, in person.

Ret. same day.

(Signed) LOUIS J. GUERIN, *D'y Sheriff.*

*Judgment, November 11th*, 1884.

C'l D't C't, Div. "C."

Interdiction of EDWARD F. STOCKMEYER. No. 12315.

In this case, submitted for adjudication, the court considering that it is fully established that the defendant, Edward F. Stockmeyer, is hopelessly insane and incompetent to manage his own affairs—

It is ordered, adjudged, and decreed that said defendant be now declared incompetent to perform validly any of the acts and doings which could be performed by a person of sane mind, and accordingly that said defendant be, and he is now, interdicted to all intents — purposes.

Judgment rendered November 11th, 1884.

Judgment signed November 15th, 1884.

(Signed) F. A. MONROE, *Judge.*

125 *Certificate of Clerk and of Recorder of Mortgages. Filed December 5th*, 1884.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "C."

Interdiction of EDWARD F. STOCKMEYER. No. 12315.

This is to certify that on the 15th day of November, 1884, an application was made before this court by Carl Stockmeyer praying to be appointed as curator of — following-named interdict, Edward F. Stockmeyer, and that according to an inventory taken by Octave Morel, Esq., notary public, on the 29th day of November, 1884, and filed in this court on the fourth day of December, 1884, the property belonging to said interdict or in which he has any interest is appraised — the sum of eighty-three thousand two hundred and seventy-seven $\frac{89}{100}$ dollars ($83,277.89).

New Orleans, this 4th day of December, 1884.

(Signed) JULES VIENNE,
*Deputy Clerk.*

MORTGAGE OFFICE, PARISH OF ORLEANS.

I certify that the above has been this day recorded in this office in Book No. 155, folio 758, pursuant to law (C. C., 321).

New Orleans, December fourth, 1884.

(Signed) GEO. GUINAULT,
*D'y Recorder of Mortgages.*

126 Civil District Court for the Parish of Orleans, Division "C."

Considering that the foregoing certificate of minor's property has been duly recorded, it is ordered that Carl Stockmeyer be appointed curator of the interdict above named, and that letters of tutorship be issued to him on his taking the oath prescribed by law.

New Orleans, December 5th, 1884.

(Signed) F. A. MONROE, *Judge.*

*Certificate.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, W. J. McGeehan, clerk of the civil district court for the parish of Orleans, do hereby certify that the foregoing eleven pages do contain a true, correct, and complete transcript of the petition, affidavit, order, citation, return on citation, letters, report of doctors, citation, return on citation, judgment, certificate of clerk and recorder of mortgages in suit No. 12315, interdiction of Edward F. Stockmeyer.

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of said court, at the city of New Orleans, on this twenty-sixth day of November, in the year of our Lord,
127 one thousand eight hundred and eighty-six, and in the one hundred and eleventh year of the Independence of the United States of America.

(Signed) W. J. McGEEHAN, *Clerk.*

*Deposition of Carl Stockmeyer.*

CARL STOCKMEYER, a witness produced, sworn, and examined on behalf of complainants, deposes and says:

By Mr. GOLDTHWAITE:

Q. Where do you live?
A. In the city of New Orleans.
Q. Of what country are you a subject?
A. Germany.
Q. Were you related to Edward F. Stockmeyer?
A. Yes, sir; he was my uncle.
Q. Of what country was he a subject?
A. Germany.
Q. Is he living or dead?
A. He is dead.

Q. When did he die?
A. On the 2d September, 1886.
Q. Where did he die?
A. In Germany.
128 Q. When did he leave Louisiana?
A. I think it was about the 9th of July, 1885.
Q. What was his condition when he left Louisiana?
A. He was insane.
Q. Had he been in the Louisiana Retreat?
A. Yes, sir.
Q. For how long a time was he in the Louisiana Retreat prior to his departure from Louisiana?
A. He was brought to the Louisiana Retreat on the 20th February, 1884.
Q. Who put him into the Louisiana Retreat or how came he to be carried there in February, 1884?
A. At the suggestion of Doctor Loeber, who was called in to examine him by his friends.
Q. Did he remain in the Louisiana Retreat continuously after that?
A. Yes, sir.
Q. Was Doctor Loeber his attending physician?
A. No, sir; he was not.
Q. What induced you and his friends to consult Doctor Loeber about putting him into the Louisiana Retreat?
A. Because some of his friends and myself thought that he had lost his mind or would lose it if he continued in the same state of excitement and his surroundings; so we called Doctor Loeber, who had a conversation with him when nobody else was present, and the doctor came back and told us it was better to put him into
129 the asylum for a few days or until he got over his excitement.
Q. You speak of excitement; what excitement was he laboring under?
A. He was laboring under the idea that he had committed a crime; that his business transactions lately were criminal. He thought that he had cheated everybody. He admitted that he had made mistakes in his business, and that preyed so much on his mind that he finally thought it was criminal.
Q. Was he a bachelor or was he married?
A. He was a bachelor.
Q. Where did he live in the city of New Orleans?
A. His residence was here, at 216 Common street.
Q. Did he occupy rooms or have a house?
A. He occupied rooms there.
Q. Did he live with any one?
A. Yes, sir; he lived with a friend, G. F. Schroeder.
Q. What was Edward F. Stockmeyer's business?
A. It was a general commission business and steamship agent, buyer, and shipper, etc.
Q. Was he a man of capital and means?
A. Yes, sir; up to a certain time.

Q. Up to what time?

A. Well, up to the time that he saw that he would never get anything out of this plantation. He lost the greatest part of the money in advances to this plantation.

Q. What was his temperament?

130 A. Well, he was rather retiring. He had very few friends.

Q. Was he cool or excitable, or what?

A. No, sir; he was not excitable at all. He was of a cold disposition.

Q. At or about the time that you consulted Doctor Loeber, was there anything remarkable in his manner or conduct which came to your notice?

A. Yes, sir.

Q. What did you notice?

A. Well, I noticed that he was very excited about his wrongdoings in business, or, as he called it, his crimes in business, cheating his customers, particularly about a certain lady for whom he acted as agent. That was the principal thing.

Q. How long before this did you notice that undue excitement?

A. It commenced early in January; it is hard to tell exactly, when. It perhaps commenced in November, 1883, and it increased gradually more and more until we thought he was insane or would become insane.

Q. This excitement, was it in the form of violence, or how did it find expression?

A. No, sir. He confided his troubles only to his friend Schroeder and myself. I don't think he talked to anybody else about them.

Q. Did it take any other form than that he believed that he had been criminally involved in some matter?

A. No, sir; that was his fixed idea, that he had acted cun-

131 ningly, and that he belonged in the penitentiary instead of being around, and he told me that he was sure he would be brought to the penitentiary. He told me that a few days before he went to the Retreat.

Q. Was he social in his temperament?

A. No, sir; he was very unsocial. He had only a small circle of friends.

Q. How old a man was he?

A. At the time he was brought to the Retreat he was fifty-one years old.

Q. How long had he been in business in the city of New Orleans?

A. I think since 1858 or 1859.

Q. Was he a man who incurred a debt?

A. No, sir.

Q. Had he made his own money?

A. Yes, sir.

Q. How long had he had money?

A. Well, when I came to New Orleans, in 1865, he had a small amount of money. He had started already; he had started for himself in his business in 1865. Before that he was associated with his

brother-in-law. When he started for himself he had a small amount of money; he had about $15,000.

Q. Do you know anything about his dealings with Mr. Charles P. McCan and the Godberys, of your own knowledge?

A. No, sir; I know very little about them. He conducted them all himself.

132 Q. Did he speak to you with reference to them?

A. Not about particulars. He only told me that our mortgage had to go behind the McCan mortgage. We could not help ourselves otherwise, and even at that it would be better than to let the plantation run waste; but this transaction of McCan coming in with $25,000 would keep the plantation up and keep our mortgage in a somewhat better condition than when the plantation would run waste.

Q. Was it his money which had been advanced to the Godberys?

A. Yes, sir.

Q. Was the pledge which was given to him his property?

A. Yes, sir.

Q. Did the firm of Edward F. Stockmeyer & Co. have anything to do with this pledge?

A. I don't know whether the pledge was made in the name of the firm or in his own individual name.

Q. It was made in his own individual name.

A. Well, then, the firm had nothing to do with it.

Q. Do you know whether any part of the money which was advanced to the Angelina plantation has been paid? Mr. Godbery has testified that there was a balance of $30,000 due.

A. No, sir; that is due yet.

Q. What is the amount now due?

A. $31,457.96, without any accrued interest.

Q. That amount was due in January, 1884?

A. Yes, sir; the amount had been higher than that, but

133 on the 19th July, 1884, it was reduced to $31,457.96.

Cross-examined by Mr. GRANT:

Q. Do you remember the date when you called in Doctor Loeber to see your uncle?

A. On the 20th February, 1884, and the same day he was brought to the asylum.

Q. Before that he had been in his office transacting business, had he not?

A. Yes, sir.

Q. Were you in the office also?

A. Yes, sir.

Q. After he went into the asylum you acted as his agent in the transaction of business?

A. I continued the firm up to the 15th October, 1884.

Q. When were you appointed liquidator of the firm?

A. I suppose in October some time.

Q. October 13th?

A. Well, I dissolved the firm on October 15th, and I suppose right after that I must have been appointed. I do not remember the exact date.

Q. You continued to act as liquidator until after the sale of the plantation at the suit of Mr. McCan?

A. Yes, sir; I am still liquidator of the firm.

Q. At the time of the sale of this plantation you were also
134 curator?

A. What was the date of that sale?

Q. That was in March, 1885.

A. Yes, sir; I was.

Q. Your uncle was not generally known outside of the immediate circle of his friends?

A. Yes, sir; he was generally known by a great many people, but he did not come in contact with them. He was a very quiet man and did not like to speak much.

Q. Did the insanity with which he was afflicted come from a hereditary taint or did it come from some other cause?

A. No, sir; it came from mental excitement about his business transactions.

(Signed) C. STOCKMEYER.

*Deposition of George Godbery.*

ED. F. STOCKMEYER *et als.*
*vs.*
CHARLES P. MCCAN *et al.* } 11224.

NEW ORLEANS, LA., *December* 10, 1886.

Testimony on behalf of the complainants resumed this day,
135 at 10 o'clock a. m., at the law office of Alfred Goldthwaite, Esqr., No. 3 Carondelet street, New Orleans.

Present: Alfred Goldthwaite, Esqr., solicitor for the complainants; William Grant, Esqr., solicitor for the defendants.

GEORGE GODBERY, a witness produced, sworn, and examined on behalf of complainants, deposes and says:

By Mr. GOLDTHWAITE:

Q. You are one of the defendants in this suit of Stockmeyer and others *versus* Charles P. McCan and others?

A. Yes, sir; I think I am.

Q. Did you have any dealings with Mr. Edward F. Stockmeyer with reference to the Angelina plantation?

A. Yes, sir.

Q. Do you remember how much you were indebted with Henry Godbery to Mr. Edward F. Stockmeyer in January, 1884, on account of the said Angelina plantation?

A. I think it was $32,000, if my memory does not fail me.

Q. Has any of that money been paid?

A. None to my knowledge.

Q. What security had Mr. Edward F. Stockmeyer for the payment of that debt?

A. Two pledged notes for $8,750 each.

Q. Was that all the security he had?

A. That and a privilege on the crop, but that privilege was not on the crop of 1884. He did not have any privilege on
136 the crop of 1884. Mr. McCan had it that year. The only security Mr. Stockmeyer had was the pledge notes, and, of course, the year previous to that he had a privilege on the crop necessarily. I am now speaking of the year he was furnishing us.

Q. Were you connected or related to Mr. Stockmeyer in any way?

A. No, sir; no family ties at all.

Q. When the agreement of the 25th January, 1884, was entered into between Charles P. McCan and Stockmeyer and others, how long was the negotiation pending before the agreement was reduced to writing?

A. Between Edward F. Stockmeyer and Mr. McCan?

Q. Yes; and you and your brother.

A. Between Stockmeyer and Mr. McCan, I think it was between the 15th January and the 3d or 4th February before everything was closed. Mr. McCan was referred to about that time. They were talking over the matter about trying to get advances from about the middle of January to the 3d or 4th February. I am not good on dates.

Q. Do you know whether Mr. Stockmeyer had any previous acquaintance with Mr. McCan?

A. No, sir; I don't think he knew the party at all except by name. He did not know him personally.

Q. Who got the money advanced by McCan?

A. What do you mean?

Q. Who received the money?

137 A. You want to know whether we received the money in block or not?

Q. How did you receive it, and who received it?

A. The money was to be placed in the bank. We were to draw checks, and Mr. McCan was to sign the checks for such portions as we required.

Q. Did you receive it all at one time or how did you receive it?

A. We received it at different times.

Q. Extending over what period of time?

A. Well, the first checks were given some time in February, and the checks were stopped off on us in September.

Q. Then you did not receive it all in cash when the notes were made?

A. No, sir; we did not receive the whole money in cash; we just received it as we needed it for the pay-rolls.

Q. Have you any idea how much you did receive in all?

A. No, sir; as I told you yesterday, I was not book-keeper and could not tell you what amount was received. I know what he was to advance; that is all. The amount to be advanced was $25,000.

Q. Have you ever been furnished with any account?

A. No, sir; no account current has been sent in, to my knowledge, unless it was sent in after I left the place.

Q. What kind of a man was Mr. Stockmeyer, in temperament?

A. Well, he was an easy-going man, had very little to say, and a gentleman; that is all I can tell you about him.

138 Q. Was he married or single?

A. He was a bachelor.

Q. Was he reserved or open?

A. Very reserved.

Q. In your dealing with him was there any peculiarity about him which impressed you?

A. In regard to what?

Q. In his manner, conversation, or dealing?

A. Yes, sir; he was always very kind to me and seemed to think a great deal of me.

Q. That was not peculiar, was it?

A. Well, I think he was a good friend from the way he was acting from one year to another. Necessarily falling back every year, he did not seem to bother us at all about money and told us to go ahead. Of course, I considered him a friend, as he was acting in that way, and knowing a great many other commission merchants.

Q. Had you been to any other commission merchants, trying to get money, in New Orleans?

A. Yes, sir.

Q. Name some of them.

A. I went to Mr. Richard Milliken, Leon Godchaux, Pierre Lanaux, Lehman Abraham, and T. D. Miller & Co.

Q. What success did you have with these gentlemen?

A. I was very unsuccessful.

Q. Did you get any advances at all from any of them?

139 A. No, sir.

Q. How did you come to go to Mr. McCan?

A. Well, it was suggested by some one. I don't remember exactly who was the one that suggested Mr. McCan. I know we were looking around for a rich commission merchant, and some one suggested C. P. McCan as having money, and we might as well try him.

Q. Did Mr. McCan go to see Mr. Stockmeyer?

A. I don't know whether they had any private interviews or not.

Q. Who conducted this matter between McCan and Stockmeyer?

A. I do not understand your question.

Q. Who arranged the matter between Stockmeyer and Mr. McCan?

A. They must have come to a mutual agreement between themselves.

Q. Were you present at any of these interviews?

A. No, sir; I never was present.

Q. From what you had seen of Mr. Edward F. Stockmeyer when you first learned of his being put into the retreat or asylum, were you surprised to learn of it?

A. Yes, sir; I was surprised when I heard of it.

Q. In the light of subsequent events, do you recall any instance of peculiarity in Mr. Stockmeyer?

A. Yes, sir; after we heard of the gentleman becoming insane it brought back very forcibly the manner in which Mr. Stockmeyer acted at the notarial office of Mr. Andrew Hero at the time that act was being passed. I thought it looked strange—of course it
140 only struck me afterwards when I heard of his insanity.

Q. Give any instance.

A. Well, Mr. Stockmeyer, when in the office, was walking in and out very frequently. He would take up the acts, read them, put them down, and walk out again. Then he came back and signed the papers with us, and we all went out together, and from there we went over to his office with him, and the last thing I remember of it was that we took a drink right there on Gravier street.

Q. What peculiarity, if any, did you know?

A. Well, I noticed that he seemed to be very nervous. Of course, I knew that he was very reserved and queer, but I thought at the time that the gentleman was uneasy, as he was doing a great thing, that of transferring his mortgages and pledges over to another party. That struck me afterwards, and that is the reason he acted such in giving up his first privileges.

Q. You say he was nervous?

A. Yes, sir.

Q. Was he of an excitable or nervous disposition, or what temperament?

A. Well, I think he was a nervous man—timid—with very little to say.

Q. Have you related all that occurred at that time?

A. All that I can think of right now.

Q. Did you notice anything, or do you recall anything
141 now, which occurred before you went to the notary's office?

A. Did I notice anything about him?

Q. Yes.

A. No, sir; I noticed nothing at all excepting this. I advised him myself, and I think Mr. Carl Stockmeyer was in the office at the time, I told him it was better for him to take the place, because Mr. McCan was a very hard man, and if we happened to be unfortunate in a bad year we were gone, because he would not allow us any chance; and he told me again, at that time, that he would not seize us. Then I thought again he was a friend of the family; that he had been doing business for a great number of years with my father, brother, and ourselves, and I thought it was through friendship more than anything else. That was before we went to the notary's office. I think it was kindness or consideration on his part.

Cross-examined by Mr. GRANT:

Q. Look at the exhibits marked L and M and state whether you, your brother, and your sisters signed these documents.

A. Yes, sir; I signed these papers, and my sister's names are also there signed.

Q. Do you know how much you received in the way of advances after the 24th of September?

A. No, sir.

142 Q. You have a general idea of about the amount of advances that year?

A. We were to receive $25,000.

Q. You received about $29,000 in all, did you not?

A. I never saw the books from the month of September.

Q. You kept the books yourself?

A. No, sir; I never saw the books. From the month of September, I may as well say, I retired from the management of the place.

Q. It appears by your statement that you received at that time over $25,000.

A. By September 24th?

Q. Yes; do you know where you got that information from?

A. That we received more than $25,000 before September?

Q. Yes.

A. I know we ran out with $25,000 and we needed more money to harvest the crop.

Q. Your brother kept the books?

A. Yes, sir; my brother was the party that kept the books and gave the checks. You could find out exactly from him the amount of money that was brought in, because he must have the stubs of the checks.

Q. You had no reason to believe that Mr. Stockmeyer was insane, had you?

A. No, sir; I had not the slightest idea of it.

Q. I suppose your first information of it was when you learned he was in the asylum?

143 A. Yes, sir; that was the first I knew of it.

Mr. Goldthwaite, for complainants, offers in evidence the transcript of the record in the case No. 197 of the twenty-sixth judicial district court, parish of St. John the Baptist, entitled Charles P. McCan *versus* Henry Godbery and George Godbery, with the certificate of the clerk of the court, marked "P."

He also offers in evidence the sheriff's deed of sale to Charles P. McCan, marked "R."

*Transcript of Record, Marked Exhibit "P."*

STATE OF LOUISIANA:

Twenty-sixth Judicial District Court, Parish of St. John the Baptist.

CHAS. P. McCAN
*vs.*
HENRY GODBERY and GEORGE GODBERY. } No. 197.

Petition for executory process, with mortgage acts and notes annexed. Filed January 15th, 1885.

To the hon. the twenty-sixth judicial district court of the
144 State of Louisiana in and for the parish of St. John the Baptist, in the State of Louisiana:

The petition of Charles P. McCan, of the city of New Orleans, in the State of Louisiana, with respect shows—

That your petitioner is the holder and owner of four certain promissory notes, for the sum of five thousand dollars each, made and subscribed by Henry Godbery and George Godbery, of the parish of St. John the Baptist, in this State, drawn by them jointly and *in solido* to their own order and endorsed by themselves in blank, dated at New Orleans, La., the twenty-fifth day of January, eighteen hundred and eighty-four, and made payable at the New Orleans National Bank, in the city of New Orleans, in this State, on the fifteenth day of December, A. D. 1884, the twentieth day of December, A. D. 1884, the twenty-seventh day of December, A. D. 1884, and the fifth day of January, A. D. 1885, all bearing interest from and after their respective maturities; if not then paid, at the rate of eight per cent. per annum until final payment, and which said four notes are hereto annexed and made part of this petition.

Petitioner further represents that said four notes are paraphed "*ne varietur*" by Andrew Hero, Jr., a notary public of the parish of Orleans, in this State, under date of January 25th, 1884, and are thereby identified with an act of mortgage passed before said notary on January 25th, 1884, and of record in the office of mortgages in the parish of St. John the Baptist, as required by law, in which the said Henry Godbery and George Godbery did specially mort-
145 gage, to secure payment of said notes, with interest, attorney's fees, and costs, the following-described property, viz:

All and singular that certain tract of land or plantation, together with the buildings and improvements thereon, including the sugar-house, machinery, engines, boilers, fixtures, apparatus and appurtenances thereof, mules, wagons, carts, aratory implements, and all articles of personal property thereto attached or used in the cultivation thereof, situated, lying, and being in the parish of St. John the Baptist, in this State, on the left bank of the Mississippi river, at about forty-eight miles above the city of New Orleans, and measuring, more or less, twenty arpents front on the Mississippi river by forty arpents in depth, with a double concession between opening

lines, and bounded below by property now or formerly belonging unto Esteve Marqueze, and above by property now or formerly belonging to E. Chenet.

As also those tracts of land or parcels of land situated in said parish of St. John the Baptist, in this State, lying or being in the rear of the above-described tract of land, and designated or described as follows: Lot or section No. ninety-seven, in township No. eleven (east of the Mississippi river), of range No. six east, containing forty-five acres.

Your petitioner further represents that in said act said Henry Godbery and George Godbery confessed judgment on said notes in favor of any holder thereof; bound themselves not to alienate or encumber said property to the prejudice of said notes and mortgage; waived appraisement thereof and all laws pertaining thereto, and further obligated themselves and said property to pay ten per
146 cent. attorney's fees in event a suit became necessary to enforce payment of said notes, with interest and costs; all of which will more fully appear by a certified copy of said act of mortgage, with certificate thereto attached of its record in the office of mortgages of the parish of St. John the Baptist, which is hereto annexed and made part hereof.

Petitioner further avers amicable demand without avail.

Wherefore, the premises being considered, your petitioner prays that executory process issue herein according to law; that, after due and legal notices and compliance with all requisites of law, the sheriff of the parish of St. John the Baptist do seize and take in his possession the property as described in this petition and said act of mortgage, and that, after due proceedings, the same be sold for cash, to the highest bidder, without appraisement and according to law, and that there be paid to your petitioner out of the proceeds of the sale, in preference to all other creditors, the amount of said four notes of five thousand dollars each, with interest at the rate of eight per cent. per annum on each from the date of their respective maturities, six dollars for costs of copy of said act of mortgage, ten per cent. attorney's fees on the amount of said notes in principal and interest, and all costs of sale of these proceedings, and that all such orders and decrees be rendered herein as are necessary, and for all general relief.

(Signed) FRANCIS GRAHAM, *Att'y.*
C. P. McCAN.

147 *Order.*

Let executory process issue herein as prayed for and according to law.

January 15th, 1885.

(Signed) M. HAHN, *Judge.*

Notice of demand and service of copy of petition waived.

Parish of St. John the Baptist, January 19th, 1885.

(Signed) H. GODBERY.
G. GODBERY.

*Promissory Notes Annexed to and Made Part of the Petition and Filed Jan'y 15th, 1885.*

$5,000.00. NEW ORLEANS, LA., *January 25th*, 1884.

On fifteenth day of December, eighteen hundred and eighty-four, after date, we, jointly and *in solido*, promise to pay to the order of ourselves, at the New Orleans National Bank, in this city, five thousand dollars, value received, with interest at the rate of eight per cent. per annum from and after maturity, if not then paid, until final payment.

(Signed) GEO. GODBERY.
HENRY GODBERY.

[Written across the face:] "*Ne varietur.*" New Orleans, Jan'y 25, 1884. (S'g'd) Andrew Hero, Jr., not. pub.

(Endorsed:) Geo. Godbery, Henry Godbery.

148 $5,000.00. NEW ORLEANS, LA., *January 25th*, 1884.

On twentieth of December, eighteen hundred and eighty-four, after date, we, jointly and *in solido*, promise to pay to the order of ourselves, at the New Orleans National Bank, in this city, five thousand dollars, value received, with interest at the rate of eight per cent. per annum from and after maturity, if not then paid, until final payment.

(Signed) GEO. GODBERY.
HENRY GODBERY.

[Written across the face:] *Ne varietur.* New Orleans, Jan'y 25, 1884. (S'g'd) Andrew Hero, Jr., not. pub.

(Endorsed:) Geo. Godbery, Henry Godbery.

$5,000.00. NEW ORLEANS, LA., *January 25th*, 1884.

On twenty-seventh of December, eighteen hundred and eighty-four, after date, we, jointly and *in solido*, promise to pay to the order of ourselves, at the New Orleans National Bank, in this city, five thousand dollars, value received, with interest at the rate of eight per cent. per annum from and after maturity, if not then paid, until final payment.

(Signed) GEO. GODBERY.
HENRY GODBERY.

[Written across the face:] *Ne varietur.* New Orleans, Jan'y 25, 1884. (S'g'd) Andrew Hero, Jr., not. pub.

(Endorsed:) Geo. Godbery, Henry Godbery.

$5,000.00. NEW ORLEANS, LA., *January 25th*, 1884.

149 On fifth of January, eighteen hundred and eighty-five, after date, we, jointly and *in solido*, promise to pay to the order of

ourselves, at the New Orleans National Bank, in this city, five thousand dollars, value received, with interest at the rate of eight per cent. per annum from and after maturity, if not then paid, until final payment.

(Signed) GEO. GODBERY.
" HENRY GODBERY.

[Written across the face:] *Ne varietur.* New Orleans, Jan'y 25, 1884. (S'g'd) Andrew Hero, Jr., not. pub.

(Endorsed:) Geo. Godbery, Henry Godbery.

*Act of Mortgage Annexed to and Made Part of the Petition. Filed January 15th, 1885.*

STATE OF LOUISIANA, }
*Parish of Orleans.* }

Be it known that on this twenty-fifth day of January, in the year of our Lord one thousand eight hundred and eighty-four, before me, Andrew Hero, Jr., a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned,
150 personally appeared Henry Godbery and George Godbery, residents of the parish of St. John the Baptist, in this State, who severally declared that requiring to have goods and necessary supplies furnished and moneys actually advanced to be used for the purchase of necessary supplies and the payment of necessary expenses and laborers to plant, cultivate, gather, save, and manufacture the crops of sugar, molasses, and other products to be made and raised or grown during the present year, eighteen hundred and eighty-four, on the hereinafter-described plantation, situated in the parish of St. John the Baptist, in this State, known and designated as the "Angelina plantation," they have contracted a loan of twenty-five thousand dollars of and from Charles P. McCan, of this city, and as evidence of said loan or indebtedness said Messrs. Godbery have made and subscribed five certain promissory notes for the sum of five thousand dollars each, drawn by them jointly and *in solido* to their own order and endorsed by themselves, dated at New Orleans on the day and date thereof, and made payable at the New Orleans National Bank, in this city, on the fifteenth day of December, the twentieth day of December, and the twenty-seventh day of December, eighteen hundred and eighty-four, and the fifth day of January, eighteen hundred and eighty-five, respectively, after date, with interest at the rate of eight per cent. per annum from and after maturity, if not then paid, until final payment; which said notes, after having been paraphed by me, said notary, for identification herewith, were delivered unto said Charles P. McCan, who hereby acknowledges their receipt.

151 And in order to secure the full and punctual payment of the aforedescribed promissory notes, in principal and interest, as well as all interest that may accrue thereon, together with all

costs, charges, commissions, and attorneys' fees, as hereinafter stipulated, the said Henry Godbery and George Godbery moreover declared that they do by these presents specially mortgage, affect, and hypothecate unto and in favor of said Charles P. McCan, his heirs and assigns, as well as of any and all such person or persons who may hereafter become the future owner or owners of said notes or either of them, the following-described property, viz:

All and singular that certain tract of land or plantation, together with the buildings and improvements thereon, including the sugar-house, machinery, engines, boilers, fixtures, apparatus, and appurtenances thereof, mules, wagons, carts, aratory implements, and all articles of personal property thereto attached or used in the cultivation thereof, situated, lying, and being in the parish of St. John the Baptist, in this State, on the left bank of the Mississippi river at about forty-eight miles above the city of New Orleans, and measuring, more or less, twenty arpents front on the Mississippi river by forty arpents in depth, with a double concession between opening lines, and bounded below by property now or formerly belonging to Esteve Marqueze and above by property now or formerly belonging to E. Chenet.

As also those tracts or parcels of land situated in said parish of St. John the Baptist, in this State, lying or being in the rear
152 of the above-described tract of land and designated or described as follows: Lot or section No. ninety-seven, in township No. eleven (east of the Mississippi river) of range No. six east, containing forty-five acres.

Which said plantation and appurtenances are so to remain mortgaged and hypothecated until the full and final payment of the aforesaid notes in capital and interest, the said Henry Godbery and George Godbery hereby binding themselves and their heirs not to alienate, deteriorate, nor encumber the same to the prejudice of these presents, which are accepted by said mortgagee.

And the said Messrs. Godbery further declared that they do by these presents bind and obligate themselves to cause all and singular the buildings and improvements on the aforedescribed property to be insured and kept insured against the risk of fire by one of the insurance companies of this city in the sum of twenty thousand dollars until the full and final payment of the aforedescribed notes, and to transfer and deliver unto the said mortgagee the policy or policies of such insurance or insurances; in default whereof said mortgagee and any and all holders of said notes is, and are hereby, authorized to cause such insurance or insurances to be made and effected at the cost, charge, and expense of the said mortgagors; but this clause shall not be construed as obligatory on such holder or holders or as making them liable for any loss, damage, or injury which may result from the non-insurance of the said buildings.

And the said Messrs. Godbery further declared that they do, by these presents, consent, agree, and stipulate that in the event
153 of the said notes or either of them not being punctually paid at maturity it shall be lawful for and they do hereby authorize the said mortgagee or any other holder or holders thereof to

cause all and singular the property hereinbefore described and herein mortgaged to be seized and sold under executory process (issued by any competent court) without appraisement to the highest bidder, payable cash, the said Messrs. Godbery hereby expressly dispensing with all and every appraisement thereof and by these presents waiving and renouncing the benefit of appraisement and of all laws or parts of laws relative to the appraisement of movable or immovable effects, &c., seized and sold under executory or other legal process, and also confessing judgment in favor of said mortgagee and such person or persons who may be the holder or holders of said notes for the full amount thereof, capital and interest, together with all costs, charges, and expenses whatsoever.

And the said Messrs. Godbery further declared that they do by these presents bind and obligate themselves and their heirs to pay and reimburse unto said mortgagee and such person or persons as may be the holder or holders of said notes all such lawyers' or attorneys' fees, together with all such costs, charges, and expenses as said mortgagee or any such holder or holders shall or may incur or pay in the event of the non-payment of said notes at maturity or in case it should be necessary to place the said notes or either of them in the hands of an attorney-at-law for adjustment, compromise, settlement, suit, or otherwise, or of any legal proceedings
154 whatever becoming necessary or being instituted at any time for the protection or preservation of the rights and claims of said mortgagee or of any future holder or holders or owner or owners of said notes, said attorneys' fees, however, to be fixed at 10 per cent. on the amount so in suit.

And the said Messrs. Godbery further declared that they hereby confess judgment for the amount of said notes, with interest as aforesaid, and all costs, charges, expenses, and attorneys' fees as aforesaid, waive citation and all legal delays, as well as all appeals and writs of error, this being their answer and acknowledgment of all indebtedness as aforesaid, as also a formal waiver of legal notices and right of appeal, hereby authorizing and empowering the holder or holders of said notes or either of them at once to enter judgment before any court of competent jurisdiction, without any citation or previous notice of any kind, on a mere production of an authentic copy of this act, for the whole or part of said indebtedness, attorneys' fees, costs, charges, expenses, &c., as aforesaid, provided that execution shall be stayed until maturity of the notes sued on; also that in case *of* a forced sale should become necessary from any cause whatever, whether from failure or inability to pay or otherwise, said Messrs. Godberry by these presents waive and acknowledge legal service of notice to appoint an appraiser and to subdivide, as well as all legal delays, and consent to the immediate execution of the judgment which may have been entered, hereby promising that no injunction or process of law tending to delay a sale shall be resorted to by them or by any one holding under them and renouncing
155 such right or privilege.

And in order to more fully secure the punctual payment of all such advances and moneys advanced or to be advanced as aforesaid,

costs, charges, expenses, commissions, and attorneys' fees, and of the aforesaid notes in principal and interest, a special lien and mortgage or privilege is hereby granted and recognized for the full sum of fifty thousand dollars on any and all crop or crops of sugar and molasses that may be planted, grown, raised, and gathered or made and manufactured during the year eighteen hundred and eighty-four on the hereinbefore mentioned and described plantation, tracts and parcels of land; and this instrument is hereby directed to be recorded in order to preserve and make the same public, so as to operate and bear upon the crops of the year eighteen hundred and eighty-four grown and produced on the aforesaid plantation,

Furthermore, for the same purpose and for the same amount, the entire crop made and grown on the aforesaid plantation, known as Angelina, during the year eighteen hundred and eighty-four is hereby pledged and pawned unto the said Charles P. McCan, his heirs and assigns, and the said Messrs. Henry Godbery and George Godbery do hereby agree and consent that any and all laws of this State pertaining to privileges for supplies furnished or money advanced and used for the purchase of necessary supplies and the payment of necessary expenses, laborers, etc., to carry on a farm or plantation shall and do hereby expressly refer and have full force and effect, and bind and obligate themselves to ship and
156 consign the entire crop of sugar and molasses made, produced, and gathered on the hereinbefore mentioned and described plantation, known as "Angelina," during the year eighteen hundred and eighty-four to the said mortgagee in the city of New Orleans whenever required or notified so to do by him or his assigns, in default of which said mortgagee or his representatives or assigns are authorized at once to sequester the said crops or the proceeds thereof in whosoever's hands the same may be, regardless of any sale or transfer thereof, and to ship the same, if in kind, unto said McCan, who *are* empowered to sell the same at the current market price and hold the net proceeds after deduction of all costs, charges, expenses, commissions, and attorneys' fees, which net proceeds shall stand in lieu of the property sequestered, the said Messrs. Godbery hereby waiving and relinquishing their right to bond and the delay granted therefor and consenting that the sequestration bond shall stand in place of the release bond required by law; and, moreover, agreeing that the sequestration shall issue and that judgment shall be entered at the option of the holder of said notes or either of them without notice or citation of any kind, hereby expressly confessing judgment and waiving all notices and citations required by law and consenting that no appeal shall be taken from any of the proceedings or from the judgment entered, this being their written answer and confession of judgment for the purposes herein stated.

It is further distinctly agreed and covenanted that should any part or portion of the crops thus pawned and pledged be shipped
157 to any other house or be diverted in any other way, or should the said Messrs. Godbery refuse or neglect to ship when noti-

fied so to do, then and in that case the notes given as aforesaid and all amounts due on open account shall become due, demandable, and exigible at once, and the holder or holders thereof are hereby fully authorized and empowered to seize and sequester the crops or take out any other process they may think advisable against the same wherever found.

For that purpose the said Messrs. Godbery do hereby waive all exceptions to jurisdiction, and by this their answer acknowledge and recognize jurisdiction of the court before which process may be sued out for the purpose of subjecting such crops to the rights of the holder or holders of said notes or open account and confess judgment therefor so as to hold the said crops subject thereto.

And it is expressly agreed and understood by and between the parties hereto that the said mortgagee shall have the exclusive right to apply the net proceeds of sale of all products shipped and all payments of money made to him to the payment of any indebtedness which may be due now or which may hereafter become due to him by the said Messrs. Godbery upon open account, or to the debt secured and intended to be secured by these presents according to his view of the exigency of the case; that such application may be made at such time and in such manner as said mortgagee may elect; that no application of such proceeds of sale or money to the payment of any debt in open account which may at any time
158 be due to the said mortgagee by the said Messrs. Godbery shall impair, lessen, or prejudice the indebtedness evidenced by note and secured or intended to be secured by this instrument, or the security herein and hereby provided therefor, and that said mortgagee shall have the full and undisputed right to impute payments as he may determine to whatsoever debt may be due him by said Messrs. Godbery.

Now, to secure the faithful performance of each and of all of the foregoing obligations, the reimbursement and payment of attorney's fees, costs, charges, and expenses, interest and commissions aforesaid, and the reimbursement and payment of all premium or premiums as shall be paid by the said mortgagee or any holder or holders of the aforesaid notes in causing insurance to be effected on default of said mortgagers as aforesaid, the said Messrs. Godbery by these presents further specially mortgage and hypothecate the hereinbefore-described plantation, crops, &c., unto and in favor of said mortgagee and all holders of said notes or either of them.

It is well and distinctly agreed and covenanted by the said Messrs. Godbery that the said McCan shall be entitled to charge and is expressly allowed two and a half per cent. commissions and one-half per cent. brokerage, besides the conventional interest of eight per cent. per annum (which is hereby agreed and consented to), for and on all advances which are made to the said Messrs. Godbery or to said Angelina plantation in goods, wares, merchandise, money, or otherwise, and that the said McCan is further authorized to charge two and a half per cent. commissions and customary
159 brokerage for accepting, endorsing, buying, and selling; also that said McCan is authorized to insure the crop of sugar and

molasses, when being manufactured, in store on the place at such valuation as he may fix at the cost and charge of said Messrs. Godbery, loss, if any, payable to himself; and, moreover, to insure all goods and produce to and from the said plantation at the customary rates of effecting such insurance, and for the services thus rendered and obtaining policies said McCan is authorized to receive the scrip or accept the rebate allowed, if he prefers, and the same to retain as his own.

And the said Messrs. Godbery moreover declared that they hereby waive and relinquish all rights and claims of homestead or exemption that may be reserved unto them by law, and do by these presents convey and transfer the same unto the said McCan or any future holder or holders of the herein-described notes in full and absolute ownership to guarantee the payment of said notes, with all costs, charges, expenses, interest, commissions, and attorney's fees as aforesaid; and the said Messrs. Godbery moreover waive and relinquish in favor of said McCan or any future holder or holders of said notes or of either of them all rights and privilege of going into bankruptcy or of using the insolvent or respite or bankrupt laws of the United States, of this State, or of any other State or country in which they may hereafter reside until the whole amount of the herein-stipulated indebtedness shall have been paid in full and extinguished unless with the approval and consent of said mortgagee or such person or persons as may be the future owner or owners of said
160 notes; but this shall not debar the said mortgagee or such holder or holders of said notes from forcing said Messrs. Godbery or either of them into bankruptcy or insolvency should said McCan or the holders of said notes elect so to do.

And here personally appeared and intervened herein Miss Laura Godbery and Miss Noelie Godbery, residents of said parish of St. John the Baptist, who, having read what is hereinbefore written, declared that they are the owners of two certain promissory notes for the sum of eight thousand seven hundred and fifty dollars each, marked respectively 3 and 4, drawn by said Henry Godbery and George Godbery to the order of and endorsed by themselves, at New Orleans, February 20, 1880, and payable one year after date, with interest, at the rate of six per cent. per annum, from date until paid, and the privilege to the drawer or maker thereof of extending the said notes from year to year upon the payment of the interest, and payment of said notes being secured by special mortgage and vendor's privilege on the herein-described plantation under an act passed before said notary, Trist, on 20 February, 1880; and said Misses Godbery moreover declared that said notes and the mortgage and privilege aforesaid securing their payment shall be subordinate and inferior in rank to the mortgage and notes herein made, as well as to all claims and demands of said McCan that may become due unto him by said Henry Godbery and George Godbery for and on account of advances in money or supplies that said McCan may make or furnish to them during the current year over and
161 above the proceeds of the crops of said plantation, and that in case of any sale of the herein-described plantation and

appurtenances under judicial process or any cause whatsoever the claims and demands of said McCan shall be paid and discharged out of the proceeds arising from such sale in preference and without regard to the aforedescribed notes held and owned by them, which are subordinated and made inferior in rank and privilege to the claims and demands of said McCan.

And here appeared Edward F. Stockmeyer, of this city, who, having read what is hereinbefore written, declared and said that said Messrs. Godbery are indebted unto him in the sum of thirty-two thousand dollars, payable on the twenty-fifth of January, 1885, for and on account of advances made and furnished by him unto said Messrs. Godbery and the aforesaid Angelina plantation, and he consents and agrees that his claims and demands thereof shall be subordinate to the mortgage and notes herein granted, as well as any claims and demands that may become due unto said McCan by said Messrs. Godbery for and on account of advances in moneys and supplies that said McCan may make and furnish them during the present year over and above the proceeds of the crop of said Angelina plantation, and that in case of any sale of the herein-described plantation and appurtenances under any judicial proceedings or otherwise the amount that may be due said McCan shall be paid in preference and without regard to the claims or indebtedness due him, said Stockmeyer.

And here the said parties declared that they dispense with the production of a certificate of mortgages for annexation hereto,
162 as is otherwise required by law.

Thus done and passed in my office, in New Orleans aforesaid, in the presence of John J. Ward and Achilles J. Ferran, witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, the day and date aforesaid.

(Original signed) C. P. McCAN.
LAURA GODBERY.
GEO. GODBERY.
HENRY GODBERY.
ED. F. STOCKMEYER.
NOELIE GODBERY.

JNO. J. WARD.
A. J. FERRAN.

ANDREW HERO, JR., *Not. Pub.*

A true copy of the original act on file and of record in my office. New Orleans, Jan'y 26th, 1884.

[SEAL.] (Signed) ANDREW HERO, JR., *Not. Pub.*

I, the undersigned, clerk and *ex officio* recorder in and for the parish of St. John the Baptist, State of Louisiana, do hereby certify that the present document has been this day—the 28th of January, A. D. 1884—duly recorded in full in my office in Book T of Mortgages and Privileges, pages 125, 126, 127, 128, 129, and 130, entry No. 80, as witness my official signature and seal.

[SEAL.] (Signed) ZÉNON MILLET,
*Clerk of Court and ex Officio Recorder.*

163 *Notice of Demand of Payment to George Godbery and Sheriff's Return Thereon. Filed Jan'y 23rd, 1885.*

STATE OF LOUISIANA,
*Parish of St. John the Baptist.*

26th Judicial District Court of the State of Louisiana for the Parish of St. John — Baptist.

CHARLES P. McCAN
*versus*
HENRY GODBERY and GEORGE GODBERY. } No. 197.

To George Godbery, of the parish of St. John the Baptist:

Take notice that payment is demanded of you, within three days from the service hereof, with one additional day for every twenty miles you reside from our court-house, of the amount specified in the prayer of the accompanying petition, with interest, attorney's fees, and costs; and in default of payment within that delay a writ of seizure and sale will issue under the order rendered and endorsed on the said petition, and the property therein described will be seized and sold according to law.

Clerk's office, parish of St. John the Baptist, this 22d day of January, 1885.

[SEAL.] (Signed) ZÉNON MILLET,
*Clerk of Court.*

164 *Sheriff's Return.*

Received on the 22d day of January, A. D. 1885, and on the same day of the same month and year I served notice of demand of payment and certified copy of the accompanying petition and order on George Godbery, one of the defendants herein, by delivering the same into the hands of Mrs. Angelina Roussel, widow — James W. Godbery, mother of George Godbery, and residing at the same domicil, in the parish of St. John the Baptist, at a distance of about seven miles from the court-house of said parish, the said defendant, Geo. Godbery, being absent from the parish at the time of said service; all of which facts and all other facts connected with this service I have learned by interrogating the said Mrs. Widow James W. Godbery, a person above the age of fourteen years.

Returned, parish of St. John the Baptist, January 23rd, 1885.

(S'g'd) T. VOISIN,
*Ch'f D'ty Sheriff.*

*Notice of Demand of Payment to Henry Godbery and Sheriff's Return Thereon. Filed January 23rd, 1885.*

STATE OF LOUISIANA,
*Parish of St. John the Baptist.*

165 26th Judicial District Court of the State of Louisiana for the Parish of St. John the Baptist.

CHARLES P. McCAN
*versus*
HENRY GODBERY and GEORGE GODBERY. } No. 197.

To Henry Godbery, of the parish of St. John the Baptist:

Take notice that payment is demanded of you, within three days from the service hereof, with one additional day for every twenty miles you reside from our court-house, of the amount specified in the prayer of the accompanying petition, with interest, attorney's fees, and costs; and in default of payment within that delay a writ of seizure and sale will issue under the order rendered and endorsed on the said petition, and the property therein described will be seized and sold according to law.

Clerk's office, parish of St. John the Baptist, this 22d day of January, 1885.

(Signed) ZÉNON MILLET,
[SEAL.] *Clerk of Court.*

*Sheriff's Return.*

Received on the 22d day of January, A. D. 1885, and on the same day of the same month and year I served notice of demand of payment and certified copy of accompanying petition and order on Henry Godbery, one of the defendants herein, by delivering the same into the hands of Mrs. Angelina Roussel, widow — James W. Godbery, mother of H'y Godbery, and residing at the same domicil, in the parish of St. John the Baptist, at a distance of about seven miles
166 from the court-house of said parish, the said defendant, H'y Godbery, being absent from the parish at the time of said service; all of which facts and all other facts connected with this service I have learned by interrogating the said Mrs. Widow James W. Godbery, a person over the age of fourteen years.

Returned, parish of St. John the Baptist, January 22d, 1885.

(Signed) T. VOISIN,
*Ch'f D'ty Sheriff.*

*Third Opposition of Adelard Millet. Filed February 26th, 1885.*

CHARLES P. McCAN
*vs.*
GEORGE GODBERY and HENRY GODBERY. } No. 197.

Third opposition of Adelard Millet.

To the honorable the twenty-sixth judicial district court of the State of Louisiana in and for the parish of Saint John the Baptist, La.:

The petition of third opposition of Adelard Millet, residing in the parish of St. John the Baptist, La., respectfully represents—

That George Godbery and Henry Godbery, domiciled in said parish and defendants in the above entitled and numbered executory proceedings instituted in this honorable court, are jointly
167 and truly indebted to this petitioner and third opponent in the full sum of three hundred and twenty $\frac{70}{100}$ dollars ($320.70), with legal interest, at the rate of five per cent. per annum, from the 6th of June, 1884, until paid, for this, to wit:

That your petitioner and opponent in or about the months of May and June, 1884, in the parish of St. John the Baptist, La., sold and delivered to said George Godbery and Henry Godbery, who bought and received from opponent, the following articles and things, to wit: On the 17th May, 1884, one cart complete; on the 24th of said month and year, another cart complete, each for the price and sum of one hundred and ten dollars ($110), making for said two carts the price and sum of two hundred and twenty dollars ($220); on the 6th June, 1884, one bagasse cart for the price and sum of sixty-two $\frac{50}{100}$ dollars ($62.50), and on the 21st of said last month and year, eight cart-bodies, each for the price and sum of twenty-two $\frac{50}{100}$ dollars ($22.50), making for all said eight cart-bodies the price and sum of one hundred and eighty dollars ($180.00), making in all the sum total of four hundred and sixty-two $\frac{50}{100}$ dollars ($462.50), which both said George Godbery and Henry Godbery jointly promised and bound themselves to pay to your petitioner and opponent.

That in part payment of said sum of $462.50 the said George and Henry Godbery have paid to the petitioner the sum of one hundred and forty-one $\frac{80}{100}$ dollars, thereby leaving a balance of three hundred and twenty $\frac{70}{100}$ dollars, with legal interest, at the rate of five per cent. per annum, from the 6th June, 1884, until paid,
168 yet due by said George and Henry Godbery and which they have repeatedly promised to pay to your petitioner with vendor's privilege and lien on all said carts and cart-bodies, which were received and placed and used by said George and Henry Godbery on their plantation, situated in this parish, being the same plantation and tract of land seized by the sheriff of said parish in the above-entitled executory proceedings of Charles P. McCan *vs.* George Godbery and Henry Godbery, No. 197 on the docket of this honorable court.

Now, your petitioner and third opponent further represents that John Webre, sheriff of this parish, has (by virtue of a writ of seizure and sale issued by this honorable court in the above entitled and numbered suit and executory proceedings and to him, said sheriff, directed) seized and advertised for sale, on Saturday, the 7th day of March, 1885, at the court-house of this parish, all the said 2 carts, one bagasse cart, and 8 cart-bodies (sold by opponent to said George and Henry Godbery, as above stated), together with the said plantation and all the animals, utensils, agricultural implements, carts, &c., thereto attached, as may be more fully seen by reference to said sheriff's printed advertisement of said sale, which is hereto annexed for greater certainty and made part of this petition.

That petitioner and opponent, as the vendor of said carts and cart-bodies, has thereon the vendor's privilege for the said price of sale and said balance of three hundred and twenty $\frac{70}{100}$ dollars
169 ($320.70), with legal interest as aforesaid, which vendor's privilege entitles petitioner to be paid by preference over said Charles P. McCan, plaintiff in said suit No. 197, and over all others, out of the proceeds of the sale of such carts and cart-bodies, the said sum and balance of three hundred and twenty $\frac{70}{100}$ dollars, with interest as aforesaid.

That petitioner and opponent (by virtue of his said vendor's privilege and for the purposes of ascertaining the fund on which said privilege bears and out of which it is to be satisfied) has the right to and does require that said carts and cart-bodies be separately appraised and separately sold at the time and place stated in said advertisement of sale.

Wherefore, the premises considered, petitioner and third apponent prays that said John Webre, sheriff of the parish of St. John the Baptist, La., and therein residing, be ordered by this honorable court to retain in his hands, subject to the further order of this court, the proceeds of the sale of said two carts, said bagasse cart, and eight cart-bodies; that said articles and things be separately appraised and separately sold at the time advertised for said sheriff's sale in No. 197; that after due proceedings had that said sheriff be ordered to pay to petitioner and opponent, with vendor's privilege, said preference out of the proceeds of the sale of said carts and cart-bodies the said sum of three hundred and twenty $\frac{70}{100}$ dollars ($320.70), with legal interest thereon at the rate of five per cent. per annum from the 6th June, 1884, until paid, and costs of suit.

That said vendor's privilege on the price of said carts and
170 cart-bodies be recognized and decreed in favor of petitioner and opponent; that said John Webre, sheriff of the parish of St. John the Baptist, La., and said Charles P. McCan, residing in the city of New Orleans, be each served with a copy of this petition and third opposition and cited to answer the same, and that, after due proceedings had, the foregoing prayer and relief be granted and decreed to petitioner and opponent, who finally prays for all general, legal, and equitable relief.

(Signed) PRENTICE E. EDINGTON,
*Of Counsel for Third Opponent.*

*Affidavit.*

Adelaid Millet, third opponent, being duly sworn, deposes and says that Hon. M. Hahn, district judge, is absent from this parish.

(Signed) A. MILLET.

Sworn to and subscribed before me this 26th day of Feb'y, A. D. 1886.

(Signed) ERNEST SENTILLE,
[L. S.] *D'y Cl'k C't.*

*Order.*

Let the within petition of third opponent be filed, and let John Webre, sheriff of the parish of St. John the Baptist be, and he is hereby, directed and ordered to retain in his hands until the
171 further orders of this court, out of the proceeds of the sale of the two carts, one bagasse cart, and eight cart-bodies mentioned in the within and foregoing petition and third opposition, the sum of three hundred and twenty $\frac{70}{100}$ dollars ($320.70), with legal interest as within prayed for, and let said sheriff be, and he is hereby, ordered to appraise and sell separately the said two carts, one bagasse cart, and eight cart-bodies, and let the said sheriff and Charles P. McCan be cited as within prayed for.

Parish of St. John the Baptist, February 26th, 1885.

(Signed) ZÉNON MILLET,
*Clerk of C't.*

Sheriff's advertisement of sale annexed to and made part of the foregoing petition and third opposition.

*Sheriff's Sale.*

STATE OF LOUISIANA:

Twenty-sixth Judicial District Court, Parish of St. John the Baptist.

CHARLES P. McCAN
*vs.*
GEORGE GODBERY and HENRY GODBERY. } No. 197.

172 By virtue of a writ of seizure and sale issued by the honorable the twenty-sixth judicial district court of Louisiana in and for the parish of St. John the Baptist in the above-entitled and numbered suit and to me directed I will offer for sale, at public auction and for cash, on Saturday, the 7th day of March, 1885, at the hour of eleven o'clock a. m., at the court-house of this parish, the following-described property, to wit:

All and singular that certain tract of land or plantation, together with the buildings and improvements thereon, including the sugar-house, machinery, engines, boilers, fixtures, apparatus and appurtenances thereof, mules, wagons, carts, aratory implements, and all articles of personal property thereto attached or used in the cultiva-

tion thereof, situated, lying, and being in the parish of St. John the Baptist, in this State, on the left bank of the Mississippi river, at about forty-eight miles above the city of New Orleans, and measuring, more or less, twenty arpents front on the Mississippi river by forty arpents in depth, with a double concession between opening lines, and bounded below by property now or formerly belonging unto Esteve Marqueze and above by property now or formerly belonging to E. Chenet; as also those tracts of land or parcels of land situated in said parish of St. John the Baptist, in this State, lying or being in the rear of the above-described tract of land and designated or described as follows: Lot or section No. 97, in township No. eleven (east of the Mississippi river), of range six east, containing forty-five acres.

173 Also—

51 mules.
2 horses.
6 sheep.
1 40-horse-power upright engine.
1 Ames 8-horse portable engine.
1 Shakspeare water elevator.
32 No. 2 plows.
7 No. 4 plows.
2 rotary hoes.
1 thrasher.
1 12-inch pump.
Hose, subsoil plows, reaper.
25 sets of gearings.
10 large carts.
2 small carts.
1 cotton-seed distributor, and lots of other agricultural implements, too numerous to mention and fully enumerated in the inventory on file in my office.
Seized in the above suit.
Terms cash.

(Signed) JOHN WEBRE, *Sheriff.*

January 31st, 1885.

174 *Acceptance of Service of Copy of Petition of Opposition and Waiver of Citation by the Sheriff.*

Service of copy of petition of opposition accepted and citation waived.
Parish of St. John the Baptist, Feb'y 26th, 1885.

(Signed) JOHN WEBRE, *Sheriff,*
Per T. VOISIN,
*Chief Deputy.*

*Citation to Charles P. McCan and Sheriff's Return Thereon. Filed March 2nd, 1885.*

STATE OF LOUISIANA:

Twenty-sixth Judicial District Court, Parish of St. John the Baptist.

CHARLES P. McCAN
*vs.*
GEORGE & HENRY GODBERY, Third Opposition of ADELARD MILLET. } No. 197.

State of Louisiana to Mr. Charles P. McCan, residing in the parish of Orleans, State aforesaid:

175 You are hereby summoned to comply with the demand contained in the petition, affidavit, and order of third opposition, of which a copy accompanies this citation, or deliver your answer to the same in the twenty-sixth judicial district court of the State of Louisiana in and for the parish of St. John the Baptist, in the office of the clerk of said court, at the court-house of said parish, right bank of the Mississippi river, within ten days from the service hereof, with one additional day for every ten miles that you residence is distant from said court-house.

Witness the Honorable Michael Hahn, judge of the said court, this 25th day of Feb'y, 1885.

(Signed) ERNEST SENTILLE,
[L. S.] *D'y Clerk of Court.*

*Sheriff's Return.*

Rec'd Feb'y 28th, 1885, and on the same day, month, and year I served a copy of the within citation and accompanying petition of opposition personally on Charles P. McCan, plaintiff herein.

Ret. same day.

(Signed) W. C. DUFFY,
*Dep'y Sheriff, Parish of Orleans.*

*Petition and Protest of Defendants. Filed March 5th, 1885.*

176 In the Matter of CHARLES P. McCAN
*vs.*
GEORGE GODBERY and HENRY GODBERY. } No. 197.

To the honorable the judge of the twenty-sixth judicial district court of the State of Louisiana in and for the parish of Saint John the Baptist, La.:

The joint petition of George Godbery and of Henry Godbery, residing in said parish and State, respectfully represents—

That petitioners are the defendants and seized debtors in the above-entitled executory proceeding of Charles P. McCan *vs.* George Godbery and Henry Godbery, No. 197 on the docket of this hon-

orable court, in which proceeding the said plaintiff has sued out and obtained from this court a writ of seizure and sale directed to the sheriff of the parish of St. John the Baptist, in execution of which writ of seizure and sale the said sheriff has seized and taken into his possession, and will offer for sale at public auction, on Saturday, the 7th day of March, 1885, at the door of the court-house of said parish, for cash, the property described in the following advertisement of said sale, which is hereto annexed, inserted, and made part of this petition.

*Sheriff's Sale.*

STATE OF LOUISIANA:

Twenty-sixth Judicial District Court, Parish of St. John the Baptist.

CHARLES P. McCAN
*vs.*
GEORGE GODBERY and HENRY GODBERY. } No. 197.

177 By virtue of a writ of seizure and sale issued by the honorable the twenty-sixth judicial district court of Louisiana in and for the parish of St. John the Baptist, in the above entitled and numbered suit and to me directed, I will offer for sale at public auction and for cash on Saturday, the 7th day of March, 1885, at the hour of eleven o'clock a. m., at the court-house of this parish, the following-described property, to wit:

All and singular that certain tract of land or plantation, together with the buildings and improvements thereon, including the sugar-house, machinery, engines, boilers, fixtures, apparatus, and appurtenances thereof, mules, wagons, carts, aratory implements, and all articles of personal property thereto attached or used in the cultivation thereof, situated, lying, and being in the parish of St. John the Baptist, in this State, on the left bank of the Mississippi river, at about forty-eight miles above the city of New Orleans, and measuring, more or less, twenty arpents front on the Mississippi river by forty arpents in depth, with a double concession between opening lines, and bounded below by property now or formerly belonging unto Esteve Marqueze and above by property now or formerly belonging unto Esteve Marqueze and above by property now or formerly belonging to E. Chenet, as also those tracts of land or parcels of land situated in said parish of St. John the Baptist, in this State, lying or being in the rear of the above-described tract of land and designated or domiciled as follows: Lot or section No. 97, in township No. eleven (east of the Mississippi river) of range No. six east, containing forty-five acres.

178 Also—

51 mules.
2 horses.
6 sheep.
1 40-horse-power upright engine.
1 Ames' 8-horse portable engine.
1 Shakespeare water elevator.

32 No. 2 plows.
7 No. 4 plows.
2 rotary hoes.
1 thrasher.
1 12-inch pump.
Hoes, subsoil plows, reaper.
25 sets of gearings.
10 large carts.
2 small carts.
9 cotton-seed distributors, and lots of other agricultural implements too numerous to mention and fully enumerated in the inventory on file in my office.
Seized in the above suit.
Terms cash.
(Signed) JOHN WEBRE, *Sheriff.*

January 31st, 1885.

Now, your petitioners represent that as regards the above-described animals, utensils, mules, horses, sheep, engines, plows,
179 agricultural implements attached to said plantation and seized as aforesaid, the sale of said animals, mules, must be made on the said plantation, that being the spot where they were taken and seized with said plantation as thereto attached, and that said animals, utensils, &c., cannot be sold at the court-house of said parish, as such a sale would be violative *to* article 666 of the Code of Practice, which declares that "animals and utensils attached to plantations and manufactures and such articles as cannot be easily removed must be sold on the spot where they are taken on the day and hour appointed for that purpose by the sheriff."

That petitioners hereby solemnly protest against said mules, animals, horses, sheep, engines being sold in block at the court-house as advertised, but demand that said mules, horses, cattle, sheep be separately appraised and be separately sold on the spot where they are taken—that is to say, on the plantation.

That a sale in block of all said property would seriously and materially injure your petitioners, whereas a sale as hereinafter suggested will produce a larger amount of money in satisfaction of said writ and in contribution to the payment of the second mortgage on said property in favor of —— Stockmeyer.

The petitioners, availing themselves of the right given them by article 676 of the Code of Practice, do hereby require that all the property above seized be appraised separately, with such minuteness that they will be sold separately as follows and in the following order, to wit:

180 Firstly. The said plantation to be sold at the court-house.
Secondly. The mules to be each appraised separately and so sold on the plantation.
Thirdly. The horses, ditto.
Fourthly. The carts, ditto.
Fifthly. The two engines, ditto.
Sixthly. The plows, ditto.

Seventhly. The balance of said articles to be separately appraised and so sold in the order mentioned in said advertisement.

Wherefore petitioners hereby protest against all said property being sold in block or in lump, and further protest against the sale at the court-house of the said mules, horses, sheep, engines, elevator, plows, hoes, thresher, pump, gearings, carts, cotton-seed distributor, and therefore and herein pray that said sheriff be ordered to offer said property for sale and cause the same to be appraised separately on the said plantation in the order above prescribed by your petitioners, after the sale of said plantation at the court-house; that said sheriff be served with a copy of this petition, protest, and the order thereon.

And for all general relief.

For James Legendre and self.

(Signed) ST. M. BERAULT,
*Of Counsel for Pet'rs.*

*Affidavit.*

S. M. Berault, of counsel for petitioners, after having been duly sworn, says that the office of judge of the twenty-sixth judi-
181 cial district court of Louisiana is now vacant, and that there is now no judge in said district and in the parish of St. John the Baptist to act in said judicial office, and that the judge of the adjoining district, the 22d judicial district of La., is authorized to act in that event.

(Signed) ST. M. BERAULT.

Sworn to and subscribed before me, the undersigned authority, this 4th March, 1885.

[L. S.] (Signed) CHAS. T. SONIAT, *Not. Pub.*

*Order.*

Upon reading the foregoing petition and considering articles 666 and 676 of the Code of Practice let the sheriff of the parish of St. John the Baptist be, and he is hereby, directed and instructed to sell the property described in the foregoing petition in the order and manner therein set forth, and let the same be sold separately and appraised separately, as above set forth and prayed in said petition; the plantation to be sold first at the court-house and the other articles on the plantation, as above prayed for.

At chambers, 4th March, 1885.

(Signed) HENRY F. DUFFEL, *Judge.*

*Coroner's Return of the Service of the Aforesaid Petition and Protest on the Sheriff. Filed March 6th, 1885.*

182 Received on the 5th day of March, A. D. 1885, and on the same day of the same month and year I served certified copy of within petition, affidavit, protest, and order on John Webre

sheriff of the parish of St. John the Baptist, in proper person, at his office, in the parish of St. John the Baptist.

Returned, parish of St. John the Baptist, this 6th day of March, 1885.

(Signed) O. HUARD, *Coroner.*

*Answer of Charles P. McCan to the Petition and 3rd Opposition of Adelard Millet. Filed March 7th,* 1885.

26th Judicial District Court of Louisiana — and for the Parish of St. John the Baptist.

CHARLES P. McCAN
*vs.*
GEO. GODBERY and HENRY GODBERY. } No. 197.

And now comes Charles P. McCan and, for answer to the petition of intervention and third opposition of Adelard Millet herein filed, denies all and singular the allegations of said A. Millet, and, further answering, specially denies that any such rights exist in favor of said A. Millet as herein claimed, or any privilege
183 whatever is secured to him upon any of the articles enumerated, or that the amount claimed is or was ever due or is now due in the premises, and prays that the said opposition and intervention be dismissed at costs of said Millet and for all general and equitable relief in the premises.

(Signed) C. P. McCAN.

*Writ of Seizure and Sale and Sheriff's Return thereon. Filed March 9th,* 1885.

STATE OF LOUISIANA:

Twenty-sixth Judicial District Court, Parish of St. John the Baptist.

CHAS. P. McCAN
*vs.*
HENRY GODBERY and GEORGE GODBERY. } No. 197.

The State of Louisiana to the sheriff of the parish of St. John the Baptist, La., Greeting:

You are hereby commanded in the name of the State of Louisiana and of the hon. the twenty-sixth judicial district court in and for the parish of St. John the Baptist to seize and, after the legal delays, to advertise and sell, according to law, the following-described and mortgaged property, fully described in the petition and mort-
184 gage act filed in this case, to wit:

All and singular that certain tract of land or plantation, together with the buildings and improvements thereon, including the sugar-house, machinery, engines, boilers, fixtures, apparatus, and appurtenances thereof, mules, wagons, carts, aratory implements and all articles of personal property thereto attached or used in the cultivation thereof, situated, lying, and being in the parish of St. John the

Baptist, in this State, on the left bank of the Mississippi river, at about forty-eight miles above the city of New Orleans, and measuring, more or less, twenty arpents front on the Mississippi river by forty arpents in depth, with a double concession between opening lines, and bounded below by property now or formerly belonging to Esteve Marqueze and above by property now or formerly belonging to E. Chenet.

As also those tracts of land or parcels of land situated in said parish of St. John the Baptist, in this State, lying or being in the rear of the above-described tract of land and designated or described as follows: Lot or section No. ninety-seven, in township No. eleven (east of the Mississippi river) of range No. six, containing forty-five acres.

To pay and satisfy in cash the claim of plaintiff, he being the holder and owner of four certain promissory notes for the sum of five thousand dollars each and payable on the fifteenth day of December, 1884, the twentieth day of December, 1884, the twenty-seventh day of December, 1884, and the fifth day of January, 1885,
185 with interest from and after their respective maturities at the rate of eight per cent. per annum; also attorney's fees at ten per cent. on the amount sued for; also six dollars for costs of copy of act of mortgage and all costs of these proceedings.

Which indebtedness is evidenced by notarial act passed before Andrew Hero, Jr., notary public in and for the parish of Orleans, on the 25th day of January, 1884.

And what you do in the premises you make return thereof, together with this writ, to our said court on or before the expiration of seventy days, as the law directs.

Witness the Hon. Michael Hahn, judge of the said court, this 27th day of January, A. D. 1885.

(Signed) ERNEST SENTILLE,
[L. S.] *D'y Clerk of Court.*

*Sheriff's Return.*

Received the within writ of seizure and sale on the 27th day of Jan'y, 1885, and on the same day of same month and year I have seized and taken in my possession the property described herein, and after the legal delays I did advertise for sale, on January the 31st, 1885, the said described property in the Meschacebé, the official journal of the parish of St. John the Baptist, announcing that the said property would be sold at public auction, at the court-house of this parish, on the seventh day of March, 1885, at eleven o'clock a. m., it being full thirty days from the first publication which appeared in said official newspaper up to the day fixed for the sale,
186 to wit, on the 7th, 14th, 21st, and 28th of February, 1885, and on the 7th day of March, 1885, and after having fulfilled all the previous legal requisites; and after having offered the said herein-described property at public sale at auction in a loud and audible voice Mr. Chas. P. McCan became the purchaser and I have adjudicated the same to him for the price and sum of fifteen thou-

sand dollars, he being the last and highest bidder and which sum he has paid me cash, and that I have afterwards turned over to the said McCan, he being the seizing creditor and holding the mortgage notes which amounted to over and above said price of adjudication.

Returned March 9th, 1885.

(Signed) T. VOISIN,
*D'y Sheriff.*

STATE OF LOUISIANA, }
*Parish of St. John the Baptist.* }

I, the undersigned, clerk of court, duly commissioned and qualified in and for the parish of St. John the Baptist aforesaid, do hereby certify that the above and foregoing fifty-seven pages contain a true, correct, and complete transcript of all the documents filed and proceedings had in the suit of Charles P. McCan *vs.* Henry Godbery and George Godbery, No. 197 of the docket of the honorable the twenty-sixth judicial district court of the State of Louisiana in and for this parish.

In faith whereof I have hereunto set my hand and affixed
187 my seal of office, at the parish of St. John the Baptist aforesaid, on this the thirtieth day of November, A. D. 1886.

[SEAL.] (Signed) ZÉNON MILLET,
*Clerk of Court.*

*Sheriff's Deed to McCan, Marked Exhibit "R."*

STATE OF LOUISIANA:

Twenty-sixth Judicial District Court, Parish of St. John the Baptist.

CHARLES P. MCCAN
*versus* } No. 197.
HENRY GODBERY and GEORGE GODBERY.

Whereas I, John Webre, sheriff of the parish of St. John the Baptist, duly commissioned and qualified in and for the aforesaid parish, by virtue of a writ of seizure and sale, to me directed by the honorable the twenty-sixth judicial district court of Louisiana in and for the parish of St. John the Baptist, in the matter of Charles P. McCan *versus* Henry Godbery and George Godbery, No. 197 of the docket of said court, after having fulfilled and complied with all the previous legal requisites, did seize the following-de-
188 scribed property, to wit: All and singular that certain tract of land or plantation, together with all the buildings and improvements thereon, including the sugar-house, machinery, engines, boilers, fixtures, apparatus, and appurtenances thereof, mules, carts, wagons, aratory implements, and all articles of personal property thereto attached or used in the cultivation thereof, situated, lying, and being in the parish of St. John the Baptist, in this State, on the left bank of the Mississippi river, at about forty-eight miles

above the city of New Orleans, and measuring, more or less, twenty arpents front on the Mississippi river by forty arpents in depth, with a double concession between opening lines, and bounded below by property now or formerly belonging unto Esteve Marqueze, and above by the property now or formerly belonging to E. Chenet.

As also those tracts of land or parcels of land situated in said parish of St. John the Baptist, in this State, lying or being in the rear of the above-described tract of land, and designated or described as follows: Lot or section No. ninety-seven, in township No. eleven (east of the Mississippi river), of range No. six east, containing forty-five acres.

And, after having given due and legal notice to the said Henry Godbery and George Godbery of said seizure in the manner pointed out by law, I advertised the said before-described property for sale after the expiration of the legal delay from the time of said notice,

189 to wit, on the thirty-first day of January, 1885, by advertisements composed in English, announcing the sale to take place at the court-house of this parish, on the seventh day of March, 1885, at eleven o'clock a. m., said advertisements inserted and published in English in the "Meschacébé," the official journal of the parish of St. John the Baptist, from the said 31st day of January, 1885, to the day of sale, being full thirty days from the date of the first notice given in said official journal on the 31st day of January, seventh, fourteenth, twenty-first, twenty-eighth days of February, and on the seventh day of March, 1885.

And having further complied with and performed all the additional previous legal requisites, did expose the same at public sale at auction according to law, at the court-house of this parish, on the said seventh day of March, 1885, at eleven o'clock a. m., and at the time and place of sale I did first announce in a loud and audible voice the terms and conditions of sale, and having also read *verbatim* and in a loud and audible voice the certificate of the clerk of court, *ex officio* recorder of mortgages for the parish of St. John the Baptist, delivered to me on the day of sale, and by which certificate it appears there are no other mortgages standing in the names of Henry Godbery and George Godbery and recorded against the before-described property, the following, to wit:

First. The conventional mortgage recorded February 27th, 1880, and that by act passed on the 20th day of same month, before N.

190 B. Trist, notary public in and for the parish of Orleans, they, the said George Godbery and Henry Godbery, granted in favor of Mistress Widow James W. Godbery, Sr., to secure the payment of two promissory notes for the sum of eight thousand seven hundred and fifty dollars each, dated February 20th, 1880, made by them to their own order and by themselves endorsed, and both made payable one year after date, with interest at the rate of six per cent. per annum from date until final payment, with privilege to the makers of extending the said notes from year to year for four years upon payment of interest, and also to secure attorney's fees at five per cent. on the amount due and sued for, in case of suit, to recover the amount of the said notes or of any part thereof.

Second. The conventional mortgage recorded January 28th, 1884, and that by act passed on the 25th day of same month, before Andrew Hero, Jr., notary public in and for the parish of Orleans, they, the said George Godbery and Henry Godbery, granted in favor of Charles P. McCan, to secure the payment of five promissory notes for the sum of five thousand dollars each, drawn by them jointly and *in solido* to their own order and endorsed by themselves, dated New Orleans, January 25th, 1884, and made payable at the New Orleans National Bank, in the city of New Orleans, on the fifteenth day of December, the twentieth day of December, the twenty-seventh day of December, eighteen hundred and eighty-four, and the fifth day of January, eighteen hundred and eighty-five, respectively, after date, with interest at the rate of eight per cent. per annum from and after maturity; if not then paid, until
191 final payment; and also to secure the payment of attorney's fees at ten per cent. on the amount due and sued for, and for all such other costs, charges, and expenses as shall be incurred or paid in the event of a suit to enforce the payment of the said notes or of either of them or of any part thereof; and also the payment and reimbursement of all premium or premiums as shall be paid by any holder or holders of the said notes in causing insurance to be effected on the buildings and improvements of the above-described property in default on the part of the said George and Henry Godbery so to do, as they bound themselves in the aforesaid act of January 25th, 1884; and in said act of January 25th, 1884, before Andrew Hero, Jr., notary, personally intervened Miss Laura Godbery and Miss Noelie Godbery, of this parish, who declared that they were the holders and owners of the two notes for the sum of $8,750.00 each mentioned in the mortgage hereinabove firstly related, and that the said notes and the mortgage and privilege securing their payment shall be subordinate and inferior in rank to the mortgage and notes made and granted by the aforesaid act of January 25th, 1884, in favor of the said Charles P. McCan, and that in case of any sale of the aforesaid plantation and appurtenances under judicial process or any cause whatsoever the claims and demands of the said McCan shall be paid and discharged out of the proceeds arising from such sale in preference and without regard to the above-described notes held and owned by them.

Third. The legal mortgage in favor of the State of Louisiana and the parish of St. John the Baptist for amount of State and
192 parish taxes for the year 1884, and all interest and costs, and resulting from the filing in my office on the 19th day of August, 1884, of the assessment-rolls of taxable property of this parish for the said year 1884.

I do also certify that the only privilege standing recorded in the names of the said George Godbery and Henry Godbery and against and on certain carts and other objects on and attached to the aforesaid plantation is the one recorded on the 13th day of August, 1884, in favor of Adelard Millet for the sum of three hundred and twenty dollars and thirty cents.

And I do also certify that on the 3rd March, 1880, there was reg-

istered in this office, in Book F (N. S.) of Conveyances, pages 92 and 93, an act passed on the 20th of February, 1880, before N. B. Trist, a notary public in and for the parish of Orleans, and by which the said George Godbery and Henry Godbery gave and allowed to their mother, Mrs. Angelina Roussel, widow James W. Godbery, Sr., for for the term of her lifetime or as long as they are the owners thereof, the right to use and inhabit jointly with them the dwelling-house on the aforesaid and above-described plantation, when Charles P. McCan, being the highest and last bidder, the said before-described property, with all its appurtenances, was adjudicated to the said Charles P. McCan for the price and sum of fifteen thousand dollars, which amount the said Charles P. McCan has paid me cash:

Now, know all men by these presents that I, John Webre,
193 the said sheriff, for and in consideration of the premises and by virtue of the laws of the State of Louisiana in such cases made and provided, do sell, transfer, and set over the said above-described property to the said Charles P. McCan, and all the rights and title which the said George Godbery and Henry Godbery had in or to the before-described property; to have and to hold the same to the said Charles P. McCan, his heirs or assigns forever.

In witness whereof I have hereunto signed my name, at the parish of St. John the Baptist, in the State of Louisiana, on this the seventh day of March, one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and ninth.

(Signed) JOHN WEBRE, *Sheriff.*
P'r T. VOISIN,
*Chief Deputy.*

In presence of—
(Signed) ALEXANDER STEWART.
ERNEST SENTILLE.

Registered March 10th, A. D. 1885.

(Signed) ERNEST SENTILLE,
*D'y Cl'k C't and ex Officio D'y Recorder.*

I, the undersigned, clerk of court and *ex officio* recorder, duly commissioned and qualified in and for the parish of St. John the Baptist, State of Louisiana, do hereby certify that the above and foregoing is a true and correct abstract from Book G (N. S.) of Conveyances of my office, pages 429, 430, and 431.

In witness whereof I have hereunto set my hand and affixed my seal of office, at the parish of St. John the Baptist aforesaid,
194 on this the thirtieth day of November, 1886.

[SEAL] (Signed) ZÉNON MILLET,
*Clerk of Court and ex Officio Recorder.*

*Deposition of Carl Stockmeyer.*

CARL STOCKMEYER, a witness recalled and examined for the complainants:

By Mr. GOLDTHWAITE:

Q. There was some testimony the other day by Mr. Henry Godbery that $1,800 was paid out of this money to your uncle that was advanced by Mr. C. P. McCan. Have you examined the books?

A. Yes, sir.

Q. How much was paid, and when?

A. $1,050 was paid. I don't remember exactly the date, but I think about the middle of February.

Q. Do you know to whom it was paid?

A. To E. F. Stockmeyer & Co.

Q. There never was any other money than that $1,050 paid by Mr. Can?

A. No, sir.

Cross-examined.

By Mr. GRANT:

195 Q. You only know that from the entry you find in the books?

A. Yes, sir.

Q. You don't know actually what was paid to Mr. Stockmeyer except what is shown by the books?

A. Yes, sir.

Q. What is the form of that entry?

A. It is entered as received from D. C. McCan Son on account of interest.

Q. And you do not remember the date?

A. No, sir; but I will furnish the date and the entry itself as it stands. It is January 29, 1884.

(Signed) C. STOCKMEYER.

*Deposition of Frederick Muller.*

EDWARD F. STOCKMEYER *et al.*
*vs.*
CHARLES P. MCCAN *et als.* } No. 11224.

NEW ORLEANS, *December 14th*, 1886.

Testimony on behalf of the complainants resumed this day.

Present: Alfred Goldthwaite, Esqr., solicitor for complainants; William Grant, Esq., solicitor for defendants.

196 FREDERICK MULLER, a witness produced, sworn, and examined on behalf of complainants, deposes and says:

By Mr. GOLDTHWAITE:

Q. Did you know the late Edward F. Stockmeyer?
A. Yes, sir.
Q. How long did you know him?
A. I knew him since 1869.
Q. Continuously?
A. Yes, sir.
Q. Do you remember the time when he was placed in the Louisiana Retreat?
A. Yes, sir.
Q. Did you have anything to do with placing him there?
A. Yes, sir; inasmuch as I went to Doctor Loeber and brought him to talk to Stockmeyer; and the doctor declared that Mr. Stockmeyer was not in a condition to be left alone, and that is the reason we brought him to the Louisiana Retreat.
Q. When was that?
A. That was in February, 1884.
Q. About what time in February?
A. Well, I don't recollect the date exactly, but I believe it was after the 20th.
Q. What led or induced you to see Doctor Loeber?
A. Well, his manner and his behavior.
Q. How long prior to your seeing the doctor had you noticed his manner and his behavior?

197 A. Well, I believe I had perceived a change in his behavior about six weeks before that—that is, a change from his usual manner.
Q. Do you recollect any particular changes?
A. Well, no, sir; no particular changes in the beginning, except that he seemed to be very nervous and very often melancholy.
Q. Did you know him well?
A. Yes, sir; very well, indeed.
Q. What was his ordinary temperament?
A. Well, phlegmatic.
Q. How did he live?
A. He lived as a bachelor. Himself and Mr. Schroeder lived on Common street together.
Q. Was he social or reserved, or what was his manner with people?
A. His manner was rather reserved generally except with his intimate friends.
Q. When you say that you noticed his nervousness state how that nervousness expressed itself.
A. He was nervous, inasmuch as he would walk very fast on the street and would not bow, for instance. If he was addressed he would want to run away. If I recollect aright, it was about three weeks before we brought him to the Louisiana Retreat I noticed that.

Q. Did he have any peculiarities?

A. Yes, sir; in some respects he had peculiarities, but I don't think they would refer to anything else except that it was
198 his character. He was different in some respects.

Q. Was he like other men?

A. In what way?

Q. In his general conduct with men. Was he like the general run of men that you come in contact with in his conduct?

A. In his contact with other people he was rather diffident. In his conduct he differed in that respect from other men.

Q. When you noticed him six weeks prior to his being put into the Louisiana Retreat was there any marked change in his conduct or general behavior from what it had been previously in his life?

A. Yes, sir; if I recollect aright, about six weeks prior to his removal to the Louisiana Retreat.

Q. What I want to know is this: What difference did you notice in his general conduct and behavior besides his nervousness?

A. Well, he seemed to be very downcast and depressed, which he had never appeared to me before.

Q. Did he speak to you about his depression?

A. No, sir; he did not except by a few casual remarks.

Q. Do you know what he was depressed about?

A. Yes, sir; I know it.

Q. What was the cause of his depression?

A. Well, I mean I knew it as far as I had heard about his advances on sugar plantations.

Q. Was he depressed about his business in general or only about his advances?

199 A. I believe that was the only cause he had to be depressed about—that is, this sugar business. Since you ask me that question I recollect that I found some slight change in him from his usual behavior two years ago, when I was with him at Warm Springs, North Carolina. He seemed to me utterly helpless when he was alone. He rather needed assistance. I had a long time in telling him what route he was to take going home. I found a change in him already then.

Q. Did you leave him alone to himself then?

A. Well, I went on to New York and he came to New Orleans.

Q. Was he depressed at that time?

A. No, sir; not exactly depressed.

Q. In what was he helpless, then?

A. I mean helpless in this, that he was a like a man that never had travelled before.

Q. Did you see any recurrence of that from that time up to a short time before he was put into the Louisiana retreat?

A. No, sir; I never had occasion to notice it, because he never travelled since. We did not live together. I am a married man and he was a bachelor, living with Mr. Schroeder.

Q. How often were you in the habit of seeing him?

A. Every day. I lived with him and Mr. Schroeder for about two years when I was a bachelor.

Q. How long ago was that?

A. It must have been in 1871 or 1872.

200 Q. Did you notice any peculiarities about him at that time?

A. No, sir; except his usual way, but he was always of a social disposition towards us.

Q. Did that increase with his years or did it diminish?

A. Well, I saw it decrease during the last six weeks prior to his removal to the Louisiana Retreat.

Q. Were you surprised when he was put into the Louisiana Retreat?

A. No, sir. On the contrary, I was in favor of having him there ten or fourteen days before the time that he went there.

Q. Did you counsel it or recommend it to anybody?

A. Well, Mr. Schroeder and myself had talked about it.

Q. Was there any cause—any one cause—which made you think that he ought to be put into the Louisiana Retreat?

A. Yes, sir; my fear was that if he was not put into the Louisiana Retreat he would do himself some harm.

Q. How—take his own life?

A. Eventually. I thought of it at the time, and that he required watching.

Q. How long do you say you thought that before he was put into the Louisiana Retreat?

A. I suppose eight days; certainly eight or ten days.

Q. Did these peculiarities seem to grow on him or did they all come on him at once?

A. No, sir; they seemed to grow on him.

Q. Was there any difference of opinion among his friends when you did put him into the Louisiana Retreat?

201 A. I don't think there was. In fact I know there was no difference of opinion among any of his friends.

Q. How many intimate friends counselled together before Doctor Loeber was called in?

A. I certainly recollect four. There were Mr. Schroeder, Mr. Woesta, Mr. Skrel, and myself.

Q. What physician did you see?

A. Doctor Loeber.

Cross-examined.

By Mr. GRANT:

Q. Did you have any business transactions with Mr. Edward F. Stockmeyer?

A. No, sir.

Q. Where did you meet him ever day?

A. Being intimate friends, we met each other on the street or at the club in the evening.

Q. What was your business then?

A. My business was in cotton.

Q. What was Mr. Stockmeyer's business?

A. Mr. Stockmeyer's business was agent of the North German Lloyd; also the tobacco business, and he also done a banking business.

Q. Did he continue in the transaction of all his business until he was put into the Louisiana Retreat?

A. Well, I am not prepared to answer that question since I don't know it. I don't know whether the firm did any business or
202 not, except at the sugar business.

Q. You first noticed his conduct as indicating insanity about eight days before you and your friends concluded he ought to be put into the Louisiana Retreat?

A. Yes, sir; until we found the necessity of putting him into the Louisiana Retreat.

Q. It was not until then that you were convinced that he was not fit to take care of himself?

A. Well, I would say this much, that we thought it was a matter of necessity to put him into the Louisiana Retreat in order to have him watched, because we were afraid he might take his own life.

(Signed) F. MULLER.

*Deposition of J. F. Schroeder.*

J. F. SCHROEDER, a witness produced, sworn and examined on behalf of complainants, deposes and says:

By Mr. GOLDTHWAITE:

Q. Did you know the late Edward F. Stockmeyer?

A. Yes, sir.

Q. How long did you know him?

A. I knew him since 1857.

Q. Did you know him well?

203 A. Very well.

Q. Did you live with him?

A. Yes, sir.

Q. Where did you live?

A. We lived at various places, but at the last we lived on Common street.

Q. In rooms?

A. Yes, sir; in rooms.

Q. How long had you lived with him?

A. We lived together since 1864 or 1865.

Q. Had you rooms and meals in the same house?

A. Yes, sir.

Q. Adjoining rooms?

A. Yes, sir; adjoining rooms.

Q. What kind of a man was Mr. Stockmeyer?

A. He was peculiar. He had always been peculiar.

Q. Could you give some idea of his peculiarities? Mention any of his peculiarities.

A. Yes, sir. For instance, he generally did not know me on the

street. He generally passed me by without knowing me. I had to stop him if I wanted to address him. He would pass me by unless I stopped him.

Q. Did he give any evidence of peculiarities in his home life?

A. No, sir; not particularly. He was a kind of reserved among strangers, but not so amongst his intimate friends.

Q. Was there any change in Mr. Stockmeyer during the
204 last years of his life, prior to his being put into the Louisiana Retreat?

A. Not that I have noticed, except a short time before.

Q. How did you first notice the change?

A. He told me of being in a kind of trouble. That was the first thing I heard from him. He was a kind of depressed in his feelings. One day I asked him if he was sick, or what was the matter with him, and he told me he was not sick or any ways unwell, but that he had some trouble in his business; that he had advanced to some plantation more than he could very well afford to do. After that I found him depressed, and — remained so for three weeks before he was put into the Louisiana Retreat. Then it was proof positive that the man was overexcited.

Q. When you say that he was overexcited was it a palpable and undue excitement?

A. Yes, sir. A week before we put him there he was decidedly overexcited.

Q. Was there any peculiar expression in his excitement which you noticed?

A. Yes, sir. He told me one day that he wished for nothing better than to die. That was two or three days before we put him into the Louisiana Retreat, and then we watched him.

Q. Was this condition of things remarked by others?

A. I believe that all his friends noticed it a week before this happened.

205 Q. It was a matter of concern, then, to his friends?

A. Yes, sir; we talked to one another.

Q. Did he ever threaten to take his own life more than once?

A. Well, he said that he wished to die. He told me that he went to the river to try and jump in, but he had not the courage, and from that time on we thought it very dangerous to leave him alone.

Q. Were these peculiarities and this undue excitement increased, or how did it come upon him? Was it the result of any accident, or what?

A. Not that I know of, except that I believe it came through these advances to the plantation, which were heavier than he should have made.

Q. Did he talk to you about his business?

A. Yes, sir.

Q. How long before he was put into the Louisiana Retreat?

A. He talked to me about this affair when I found he was depressed. That was some time in January.

Q. What time in January?

A. Well, that is more than I can say, because we put him into the

Louisiana Retreat on Wednesday, the 20th February; so it was four weeks before when he spoke to me about it. It may have been at the commencement that he spoke. I cannot positively state the date.

Q. Did he talk to you much about his business?

206 A. Well, I asked him what was the matter with him. He said he was in a kind of trouble with the plantation; that he had over-advanced. He found that his means were not large enough to carry this plantation on, but at that time he was not at all crazy.

Q. Was this depression a permanent and settled depression, or was it simply a transient one?

A. It was permanent and settled. It was not a momentary thing at all.

Q. Did you see him after he was put into the Louisiana Retreat?

A. Yes, sir.

Q. Was there much change in him?

A. Well, I cannot say. When I came to visit him there he said to me, "You don't believe I am crazy," and I told him yes, I thought he was. If he was not crazy he was over-excited, and that he had to be taken away from his business, so as to have no troubles. That was the first time I saw him.

Q. Do you know whether he ever had any business troubles before this?

A. No, sir; not that I am aware of. I never knew it.

Q. Was he a man of means?

A. Yes, sir.

Q. How much fortune would you say?

A. Well, I only found out that after this had occurred, when I heard that he had over $100,000. I did not know that he was so well off.

Q. Do you know when he lost it?

207 A. He lost it during that time; I don't know how. I believe that he lost it without knowing exactly how it was himself. But he told me he had advanced and with the sugar-house built there; that the expenses were too heavy and he had paid them, and he paid along until he found he had not the means of carrying it on any longer.

Q. Did he lose his fortune the last year or two or was the loss gradual?

A. I believe he lost it all within the last year.

Q. What were his habits in life ordinarily?

A. Well, his habits were ordinarily good; he was drinking pretty freely sometimes, but nothing very extraordinary.

Q. Did that increase or diminish prior to his going into the Louisiana Retreat or within the last year?

A. That I cannot say; I did not notice it. Whether it increased or not I do not know.

Q. Was it strong drink or wine?

A. Well, he took a good many drinks, but nothing bad.

Q. Do you know what the particular malady was for which he was put into the Louisiana Retreat?

A. Yes, sir; it was craziness.

Q. Was it what is called melancholia—melancholy—or what other complaint it was?

A. Well, he would not speak at all; when you went into the office to him he went out into the passage. When we tried to speak to him he would walk around the desk and would not let
208 you come near him.

Q. He shunned everybody?

A. Yes, sir.

Q. Did he seem to have any delusions?

A. Well, it seems that he had an idea he was going to be put into jail. He had an idea that he had been cheating and that he would be put into jail.

Q. When did you notice that?

A. It was a few days before we put him into the Louisiana Retreat.

Q. How did he express himself about it? Can you recall any particular expression of his about his being put into jail?

A. He told me that he had acted wrong; that he had wronged people.

Q. Did he mention any particular person?

A. Yes, sir.

Q. Whom?

A. He mentioned Mrs. Kirchoff and myself.

Q. Had he ever wronged you in any way?

A. No, sir.

Q. It was only a delusion, then, was it?

A. Well, I loaned him some money, and I suppose he thought now that he could not repay it, and that brought on the delusion.

Q. What kind of a manner did he have towards you when he was speaking to you?

A. Well, he was terribly excited the last week or fortnight.
209 Before we put him into the Louisiana Retreat he was frightfully excited. He came even at five o'clock in the morning into my bed-room and told me that it was a terrible thing that he had not done what was right. He had an idea that he had done wrong.

Q. Did he say anything with reference to Madam Kirchoff?

A. Yes, sir; he told me about a mortgage that he had given, and that it would not come out to the full extent, or something of that kind.

Q. Was he more than usually depressed by such things, or was he like other men who had misfortunes of that kind?

A. No, sir; he was absolutely crazy. When we put him into the Louisiana Retreat he was positively crazy. It went on worse and worse until about a week before he was positively crazy, then we come to the conclusion to put him into the Louisiana Retreat. When it came to that point that we thought he would threaten his life we put him in there.

Q. You did not see the doctor before he threatened his life?

A. No, sir.

Q. After you put him into the Louisiana Retreat, do you recall, in the light of subsequent events, that this thing had been growing for any length of time before you put him in?

A. Yes, sir; it had been growing from the time he told me that he met his losses; he grew melancholy about his losses and for about a fortnight before. I think he was going crazy, still when we put him into the asylum we thought he would get over
210 it, as we thought it might only be temporary on account of losing money.

Q. That was the idea when you put him into the Louisiana Retreat, that his malady was temporary?

A. Yes, sir.

Q. Was it temporary or was it continuous?

A. No, sir; it was not temporary but continuous.

Q. Was he taken out of that retreat?

A. Yes, sir; he was taken out and sent to Europe.

Q. Did anybody go with him?

A. Yes, sir.

Q. Did he get any better in the asylum?

A. No, sir.

Q. How long after he was put into the Louisiana Retreat did he die?

A. We put him into the Louisiana Retreat on the 20th February, 1884, and he died about three months ago, or two years and six months after we put him into the asylum.

Q. Did he get helpless, or what was his condition in the asylum?

A. He would not speak to anybody.

Q. His reserve of manner increased?

A. The first time he spoke to me, but after that he never spoke to me any more. At times he would not eat, so that they had to pump the food into him. After that he would not speak, even if you spoke to him.

Cross-examined.

211 By Mr. GRANT:

Q. Did you have any business transactions with him?

A. Only when I loaned him some money; no other transaction.

Q. How long was that prior to the 20th February?

A. I don't recollect exactly, but it was after this catastrophe. It was after he was short of money, and I loaned him some money. It must have been about the end of January.

Q. It was in January, 1884, however?

A. Yes, sir.

Q. Did Mr. Stockmeyer attend to his business during this time—up to the time he was put into the Louisiana Retreat?

A. That I cannot say, because I was not in the office. I believe he attended to it, but I don't think he attended to it as he ought to have.

Q. You did not see him during the day?

A. Yes, sir; I saw him during the day at the cotton exchange.

Q. Was he dealing in cotton?

A. No, sir; he was not dealing in cotton, but he was a member of the cotton exchange.

Q. He came there more for social purposes than for business?

A. I believe so.

Q. I believe you stated that you first noticed this undue excitement which first aroused your alarm for his sanity about a week or two before?

A. Yes, sir; his mind was wandering then.

Q. When was it that you called his friends together to con-
212 sider about his condition?

A. Well, two or three days—perhaps a little longer—before he went into the asylum. If I recollect aright, Mr. Woesta and myself spoke about it prior to that—some time in January.

Q. But his condition did not alarm you or his friends until a few days before he went into the Louisiana Retreat?

A. Well, I did not imagine he was crazy, but he was depressed and I thought something was wrong.

Q. He was not a man of a very wide acquaintance?

A. Yes, sir; he knew all the town. He was a good many years here.

Q. Was he acquainted with many?

A. No, sir; he was a man of queer disposition. He only knew his intimate friends.

Q. Strangers that transacted business with him were not very intimate with him for that cause alone?

A. No, sir; they were not.

Q. Was he a reticent man, or did he talk much to strangers?

A. Yes, sir; he was reticent and did not talk much to strangers.

Q. You did not think he was insane when you loaned him the money?

A. No, sir; I did not think he was insane. I only thought to help him out, because he was a kind of downcast and I wanted to help him out of it.

Q. How long before the 20th of February was it that he told you he wanted to die?

A. I cannot exactly say, but he said that about a week before.

213 Q. And it was about that time that he told you he thought he wronged some people and would go to jail for it?

A. Yes, sir.

Q. Now, this was the first positive evidence that you had that his mind was going wrong?

A. Yes, sir; about a fortnight before we put him into the Louisiana Retreat. I could see that his mind was wandering, but it became worse about a week before.

(Signed) J. F. SCHROEDER.

*Deposition of Dr. Edward T. Shepard.*

NEW ORLEANS, *January 29th*, 1887.

EDWARD F. STOCKMEYER, by CARL STOCKMEYER,
*vs.*
CHARLES P. MCCAN *et als.* } No. 11224.

Testimony on behalf of the complainant resumed this day at 3 o'clock p. m.

Present: Alfred Goldthwaite, Esqr., solicitor for complainant; William Grant, Esqr., solicitor for defendants.

Doctor EDWARD T. SHEPARD, a witness produced, sworn,
214 and examined on behalf of the complainant, deposes and says:

By Mr. GOLDTHWAITE:

Q. How long have you lived in the city of New Orleans?

A. Most of the time since 1860. I have been away from here for two or three years during that time.

Q. Did you know one Edward F. Stockmeyer?

A. I knew him as my patient in the Louisiana Retreat.

Q. How long have you been engaged at the Louisiana Retreat? And state what is your position there.

A. I am the physician of the Louisiana Retreat. I do not remember exactly, but I think it is about seven years that I have had charge of it.

Q. At the head of it?

A. I have charge of the medical department. I have nothing to do with the financial or other management of it.

Q. Do you remember when Edward F. Stockmeyer was placed under your control and care at the Louisiana Retreat?

A. I have tried to refresh my memory by looking at some papers. I think it was on the 20th February, 1884.

Q. On the 20th February, 1884?

A. Yes, sir.

Q. What was the condition of his mind—what was his physical condition—when he was placed in the retreat?

A. Mr. Stockmeyer was suffering from melancholia, with delusion; was very much debilitated—emaciated—and in the condition that these people generally are—the broken-down condition—that
215 they are in when brought to the Retreat. That happens when their disease becomes recognized and their physicians generally see fit to send them to us. We usually do not receive them in the early stages of their malady.

Q. In what stage of melancholia and delusion was he in at that time?

A. I cannot say what stage. I expressed the opinion at once when I saw that this man was and had been insane more than two or

three days or four days. I think Doctor Loeber sent him there. I think the impression at that time was, as near as I can remember, that he had been insane or in this condition over a week or so, but my impression, stated then, was that he was in that condition a much longer period. Of course my knowledge was at that time derived from questioning his friends about it.

Q. Can you approximate the time?

A. Not exactly, but I should say six months or a year not being in perfect mental health. I am satisfied from the letter I wrote to the physician who was placed over him after he left my care that he was affected in that manner six months or a year before I took charge of his case. I based that opinion upon answers to questions which I got from his immediate friends, Mr. Muller and Mr. Schroeder, who called upon me at that time. In these cases I am obliged to make up my mind from what I see, and also from what I can learn from other people.

216 Q. Was he in a condition of weakness or disability on the 20th February, when you first saw him?

A. I do not understand your question. Weakness or disabilty in what way?

Q. I mean by weakness or disability was his mind simply weakened or was his mind disabled from proper mental operations.

A. Certainly he was unable, in my opinion, to arrive at any correct thought on anything. There was an obliquity. If he were to attempt to do that upon anything this delusion pressed against him all the time. His views would be oblique. It was impossible for the man to come to a straight, square conclusion on any matter. He would be all the time dominated by this idea that he had. These delusions would dominate his ideas at all times, no matter what subject was brought up.

Q. Did he have any particular delusion at that time?

A. His delusions were, as far as I could learn from him—he would only talk to me for the first few days after he came there. He lapsed into absolute silence for a long time. His delusions were that he had robbed people with whom he had business relations; that he had squandered their substance, and that he was to be punished for this. He expected to be punished. He was waiting for the law officers to arrive every minute. His conduct had been outrageous. He ruined one person particularly, a lady, Mrs. Kirschoff. I asked him about it. He had mentioned her name, and he

217 said that he had large funds of hers in his hands which he misappropriated.

Q. Was that a continuing delusion or simply transitory?

A. All the time; constantly; that he was dishonest; was acting dishonestly and expected to go to prison. He was under the delusion that he was a ruined man financially.

Q. Would you be good enough to state whether this disease from which he was suffering at that time is a progressive disease or whether it is a natural mania?

A. It was melancholia. While melancholia may be acute, it is much more generally so with mania. It is generally progressive.

Q. Was his a progressive case?

A. I should think it was a progressive case from what I saw of him during the sixteen or eighteen months he was under my care and what I learned about him after he went to Europe.

Q. What was his condition of mind with reference to his ability to attend to business affairs at the time you saw him first, on the 20th February, 1884?

A. He was totally unable to deal with business in any way. I suppose he would have attempted to attend to business, but he would not do it. He could not grasp any business ideas at all. He was miserable. I suppose the man would have attempted anything. He could have been preyed upon in an attempt to do anything. Anybody representing himself as an officer of the law could make him do anything.

Q. Have you had experience with a large number of people
218 afflicted with mental diseases?

A. Yes, sir; about 295 people last year, and I think 311 the year before. That is about the proportion—300 every year.

Q. From your knowledge, how long was Mr. Stockmeyer under your care?

A. For eighteen or nineteen months. I think he left for Europe in August, 1885, or about that time. He came under my care on the 20th February, 1884. I think these are the dates.

Q. From your knowledge of his case, after he was placed under your care, and from your experience with persons of unsound mind, how long prior to the 20th of February, 1884, do you think Mr. Stockmeyer was in a condition which disabled him from attending to his affairs as a business man with ordinary prudence and care would look after his affairs?

A. That I cannot state positively. I stated before that I am under the impression that his disease had been going on six months or a year. But he was in such a broken-down condition when I saw him first that I did not suppose he had been able to attend to anything properly for some months—a longer or shorter period; I cannot tell.

Q. Can you fix on any number of months?

A. I would not like to; I could not. Perhaps two or three months, perhaps longer. I do not know. My opinion was, from his breaking down—he was considerably broken down, and that within
219 the next two or three months he was considerably more broken down; he was going down hill. I do not know what part of the hill he was on then.

Q. Is there any period in which these cases develope and ripen to maturity?

A. Well, in cases of melancholia the average period of recovery, if they recover at all, is from six to eight months or the year unless it is a recurrent melancholia, which it was not. That is the average length of time. When he first came to the Retreat I gave a favorable diagnosis. I thought he would recover when we had him built up. I told his friends at that time that six or eight months would bring him to recovery.

Q. Will you be good enough to look at the statement now handed to you and marked "R" and state whether that statement was prepared by you?

Witness examines the statement "R" and answers:

A. Yes, sir; it was written by me.

Q. Can you state what time it was written by you?

A. It was written within a day or two of his leaving the Retreat, August 9, 1885.

Q. Can you state for whom or for what reason that statement was prepared?

A. This statement was prepared at the request of his friends to be sent to the physician that would take charge of him in Germany.

220 He was to be sent to Germany on a ship belonging to some member of his family—I think his sister. This letter was sent showing the treatment of his case, as a history that might be placed plainly before the physician who was to take charge of him.

Q. Is it a correct history of his case?

A. This statement "R" was written mostly from memory and some references to the prescription book. It is written mostly from memory and reference to the papers that I carry around with me and to our prescription book and one or two other things. For instance, I think this date here—June 3d or about that time—mentions about his taking food. He was then taking food voluntarily for the first time. He was fed with a stomach pump from within a few days of the 20th February, when he entered the Retreat, to the 3d of June. However, it was necessary to feed him, because I thought, as he did not speak to me, he was going to kill himself by not eating. After he found this was the mode of feeding him he made it his business to be fed this way. He would pass the tube down into his mouth and make signs to pump the food down. He was fed so until June.

Q. Were you one of the committee of doctors appointed by the court to make a report in the interdiction proceedings against Mr. Stockmeyer?

A. Yes, sir; myself and Doctor Smythe and Doctor Fitch.

Q. Will you look at that paper and state whether that is the report you made and signed with the other doctors whose signatures are there?

221 A. Yes, sir; as near as I can remember that is the wording of it; that is the date, October 22, 1884.

Mr. Goldthwaite, on behalf of the complainants, offers in evidence the statement marked "R."

Mr. Grant, for defendants, reserves the right to object to the document "R" being admitted to the proper time.

Cross-examined.

By Mr. GRANT:

Q. You had no acquaintance with Mr. Stockmeyer prior to seeing him at the Louisiana Retreat?

A. I never saw him before that, to know him.

Q. Who were the friends of Mr. Stockmeyer of whom you received reports as to his condition?

A. Mr. Muller, Mr. Schroeder, and there were two or three other gentlemen; I do not know their names. There was another gentleman whom I would know if I saw. He told me of little acts and peculiarities; and also his nephew, with one or two other gentlemen.

Q. They told you that he had only been in that condition about a week?

A. No, sir.

Q. What did they tell you?

A. Mr. Muller, Mr. Schroeder, and these gentlemen told me—I don't remember their names—that they noticed strange things about him for six months; and one gentleman said even
222 longer than that he thought Mr. Stockmeyer was not right.

Q. What did Mr. Schroeder say—do you know?

A. I do not know that I can remember exactly, but it was to the same purpose that he had noticed strange things about him; that Mr. Stockmeyer had been his room-mate, and was annoyed for some time; that he did not know that Mr. Stockmeyer was insane except for a short time. I do not know what length of time he gave me.

Q. So that all the knowledge you had with regard to his case previous to his being placed in the Retreat is derived from conversations with other people?

A. Yes, sir; and my own observation of similar cases.

Q. I ask you about your knowledge of his case.

A. Well, but the knowledge of other cases similar to his would have a bearing upon his case.

Q. They would affect your opinion of his case?

A. Yes, sir; I would be obliged to base my opinion upon them.

Q. But I ask you was not your knowledge of his case previous to your seeing him derived from conversations with other people.

A. I never saw Mr. Grant at any time before now, but I know you are not a man of eighteen years of age to-day.

Q. Still that is not answering the question.

A. Well, then, I do not understand you. I know that on comparing you with other men I would give you a greater age than eighteen years; and I know that comparing him and his
223 condition with other men this man had been unwell—had been sick for a longer period than a day. I saw him for the first time—I may say my knowledge of his case previous to my seeing him was derived from what others told me and my experience and observation in similar cases.

Q. How is melancholia classed among the diseases? Is it classed as absolute insanity or a phase of insanity?

A. Melancholia is classed as a form of insanity. There are various

classifications. There can be no rigid definition. Some authors are willing to call all cases of mental derangement insanity, and then classify them by distinct names. Some authors call them by separate names—acute and chronic; delusion of insanity; insanities pure and insanities mixed. There are various classifications, but melancholia is one of the various forms of insanity.

Q. Might it not exist with almost complete control over the mental faculties.

A. We have a kind of melancholia which is not so acute, but Mr. Stockmeyer's was not that.

Q. How would you class the melancholia which you say Mr. Stockmeyer had?

A. Just as I stated in that document "R," melancholia with delusions.

Q. In the absence of delusion what would you call melancholia?

A. A depressed condition of the sensibilities, of the feelings of a man's mental and moral condition.

224 Q. So that a man may be suffering under melancholia for a long period of time without giving any more evidence to those coming in contact with him than he would if he was suffering under some depression of the digestive organs or the liver?

A. Melancholia is very frequently caused by digestive troubles and liver troubles. That is one of the causes. When we can remove digestive troubles and liver troubles we remove melancholia. These cases may exist a long time without delusion. They are very sad, morose, quiet. That is one of the mental diseases in which you are most apt to conceal your motives.

Q. Is not melancholia a disease pure and simple of the mental faculties?

A. Melancholia is insanity. Insanity is simply a general term.

Q. Will you explain to me the difference between melancholia and insanity?

A. Well, that is an entirely different thing. Melancholia is insanity, but all insanity is not melancholia. Eggs are eggs, but all eggs are not hens' eggs.

Q. I think from the definition you give of melancholia that it might exist without any outward signs of insanity?

A. Yes, sir; I believe there are many persons suffering from melancholia whose friends do not know it.

Q. So that it is impossible in all cases, is it not, for even medical science to determine whether a man has melancholia

225 which will become insanity as commonly understood?

A. Melancholia is insanity just as all eggs are eggs, but all eggs are not hen's eggs.

Q. But are all men insane who are under the influence of melancholia?

A. If a man has a melancholia disease that man is insane; "insane" is a general term.

Re-examined.

By Mr. GOLDTHWAITE:

Q. Was this case of melancholia with delusion well defined?

A. The delusion was marked; so marked was it that I thought at one time that I believed it was delusional insanity of a melancholy type.

Q. That delusion of insanity of a melancholy type or melancholia with delusion, is that so at the beginning or does it develope? Does it start with delusional insanity or melancholia with delusion, or does it develope into that?

A. Well, that is very hard to say. You are getting me back into the early dawn of the trouble. That I cannot state. Delusion will manifest itself at any time in the course of the disease. It may exist. I may not know or it may be one of the first observed symptoms. It may be a melancholia disease, but without any manifestations of delusion, but I thought his a form of melancholia which we call melancholia with delusion.

Q. I understand that melancholia means insanity.

226 A. Melancholia means insanity. There is such a depression of the affective functions of the mind that a man suffering from it is not a healthy man.

Q. Then with delusion it is a more defined state of insanity?

A. No, sir; I do not state that. This man may have melancholia in such a state that his life is in jeopardy, and without delusion you cannot recognize it. This man may have melancholia with delusion and yet be not so serious as this other man. There are a number of types: melancholy without delusion—a rare type; melancholy which we call circular insanity; melancholia maniacal; melancholia agitata; and then there is another type of melancholia which is like as if you were thunder-stricken—as if you were almost frozen. There is melancholia with attenica, where you move about and go on to complete dementia.

Q. Does melancholia itself disable one as much as melancholia with delusion from attention to his affairs?

A. Yes, sir; you may take insanity as a class and you may take melancholia as an order in that class; then you take the various forms of it or the species or germs into consideration; but insanity includes melancholia mania and others as specific varieties of the same disease.

(Signed) E. T. SHEPARD, M. D.

*Document "R," Referred to in the Foregoing Deposition.*

Mr. Ed. F. Stockmeyer was admitted into the Louisiana
227 Retreat for the Insane Feb'y 20th, 1884. His facial expression was sad, fixed, and unchanging; the muscles of his face were in a constant state of tension; his manner was uneasy and suspicious; his skin was clammy; his tongue was pale, flabby, indented by his teeth, and covered with a thick, white slime; his breath was

very foul; his pulse was slow and compressible; his temperature was normal; his bowels were constipated, and he was somewhat emaciated.

He was under the delusion that he had conducted his business dishonestly and thus he had wronged and financially ruined several persons who had placed their funds in his management and keeping. This having been disclosed, he momentarily expected the officers of the law to arrest him. In order to avoid arrest and disgrace he went to the river with the intention to drown himself, but (according to his own statement) he was too cowardly to take the fatal plunge. He knew where he was, and considered his placement in a retreat for the insane mistaken kindness on the part of his friends. They should be undeceived relative to his character and honesty, and then they must despise him. He desired to be let alone and to die. He positively and absolutely refused to take food. His friends and his physician considered that he had been insane about fifteen days. His friends stated that he had been always peculiar, if not eccentric, and they had noticed that he behaved strangely at times during the preceding six months or year. He fell or was thrown from his horse some few years ago. Chloral hydrate, bromides, etc., had been administered without ap-
228 parent benefit. The diagnosis made in the case was delusional insanity of a melancholy character (melancholia, with delusion). At this time the prognosis was considered doubtful, inclining to favorable.

Warm baths, followed by gentle friction, forcible feeding if necessary, and such out-of-door exercise as he could take were the curative measures instituted. Pepsin and pancreative, to improve his digestion, were also prescribed. He slept irregularly, but, it was thought, sufficiently well not to require opiates. Later opium was exhibited and discontinued, as he did not bear it well; he vomited his food and slept less while taking it. He progressed rapidly from bad to worse. He became extremely asthenic. *Fellows' comp. syr. of the hypophosphites was given three times daily, and inunctions of oil every two hours were used. April 17th spots of asthenic gangrene appeared on many parts of his body and limbs (the cicatrices are yet visible, one especially on the posterior aspect of his right thigh, just above the popliteal space). He still refused to eat or to swallow food when placed in his mouth. He had ceased to speak, and had become unclean in his personal habits, passing his urine and fæces in his bed. He resisted being washed. So grave was his condition at this time it was thought he could not live. The foregoing treatment was continued, together with applications of iodoform and basilicon ointment to the ulcers, the result of the gangrene.

May 2d.—His condition slightly improved; ulcers healing; general health better.

229 May 14th.—He is able to walk about a little, nourishing

*Contains hypophosphites of lime, potassa, manganese, iron, quinine, and strychnine.

and sleeping well; no longer resists being fed with tube. He appears to desire food, but will not eat voluntarily.

May 28th.—He passed the tube into his stomach himself in order to be fed; still refuses to eat and rejects food placed in his mouth with a spoon.

June 3d.—He took food voluntarily for the first time.

June 21st.—Has taken his food voluntarily since June 3d; appetite good. Has recovered much of his flesh; looks physically well, but has aged very much. He is again clean in his habits and very particular regarding his dress. Refuses all conversation; if pressed to talk, says: "Let me alone." Will not ask for that he wants. If he wishes to go through a locked door he will stand by it uneasily until it is opened for him. If asked, Do you wish to pass? he answers, "Let me alone." He will not read.

July 10th, 1885.—Since the last date, June 20th, 1884, there has been no apparent change in his condition. He has been out of the Retreat many times for a drive, once for a walk, but did not enjoy himself. Always resisted going out and returned willingly. He left the Retreat to-day to take sail for Germany.

(Signed) EDWARD T. SHEPARD, M. D.,
*Physician of La Retreat, New Orleans, La., U. S. A.*

Aug't 9th, 1885.

230 *Deposition of Dr. F. Loeber.*

Doctor FREDERICK LOEBER, a witness produced, sworn, and examined on behalf of the complainant, says:

By Mr. GOLDTHWAITE:

Q. How long have you been a practicing physician in the city of New Orleans?

A. Twenty years.

Q. Did you know one Edward F. Stockmeyer?

A. Yes, sir.

Q. Were you called in by a party of friends to examine the condition of Edward F. Stockmeyer about the 20th February, 1884?

A. Yes, sir.

Q. Can you give any idea of the exact date that was?

A. I could if I had known what you wanted me here for, but it was a day or two before he was sent up to the Louisiana Retreat.

Q. Will you state under what circumstances you were called in and by whom?

A. I was called in either by Mr. Muller or Mr. Schroeder or Mr. Woeste. They called at my office and requested me to go and see Mr. Stockmeyer; that he acted very strangely and they did not know what was the matter with him.

Q. Where did you go to see him?

A. The first time at his office on Union street.

Q. Did you see him more than once?

231 A. I saw him more than once. I saw him twice or three times.

Q. What opinion did you then express, and what was done in consequence of that opinion you expressed?

A. Well, I told him that Mr. Stockmeyer was insane and perfectly incapable of taking care of himself or his affairs, because he determined to destroy himself, and I advised him to bring him to the Louisiana Retreat.

Q. Did they take him there in consequence of your advice?

A. Yes, sir.

Q. When—how long afterwards?

A. The next day or the day after.

Q. What was he suffering from—what form of insanity?

A. Well, he had melancholia. He was imagining that he was the most miserable man in the world. I knew him well, being his physician for a year, and when I came into the office, as soon as he saw me, he ran off and hid himself in a corner. When I came and spoke to him I could not make him speak to me. When I told him what was the matter with him he told me he was a most miserable wretch, not to speak to him or come near him, because I would be infected by it; that he would be imprisoned because he had lost money that did not belong to him.

Q. Was it melancholia with delusion, or was it simply melancholia?

A. Certainly; it was melancholia with delusion.

Q. Was it a marked or mild form?

232 A. It was a marked form.

Q. How long before that had it been when you saw him?

A. I had seen him a week or two weeks before. I saw him often.

Q. Did you ever notice any peculiarities or anything in his condition which attracted your attention?

A. It struck me some time before that that he was very quiet. He was not so lively as he used to be.

Q. Was there anything else remarkable?

A. No, sir; I could not see anything else. He was a peculiar man always, but he was more so, of late, before he really got sick.

Q. Had he been suffering from any fever or any disease at that time other than this melancholia?

A. Not that I know of.

Q. You were not called upon to treat him for anything?

A. No, sir.

Q. When you had seen him had you any particular conversation with him?

A. No, sir; I had no particular conversation except to ask him some questions to satisfy myself that he was insane.

Q. When did you reach that conclusion?

A. Well, when he told me that the police officers were behind him to arrest him and to keep away; that he was smelling bad.

Q. That is when you were called in by his friends?

A. Yes, sir.

Q. You had not noticed him particularly before that?

233 A. No, sir.

Q. How long does it take this melancholia with delusion to manifest itself? When does it find expression?

A. Well, in my opinion—I do not know that I am correct—but, in my opinion, melancholia has always some delusion with it. As soon as melancholia commences there are some delusions.

Q. From your knowledge of this particular case, how long do you think?

A. Well, I am not an expert in these cases, and I would not like to state.

Q. Do you know whether melancholia is progressive or acute?

A. Well, I know the fact, but I have had no experience in it.

Q. Do you know whether this was a progressive or an acute case?

A. Well, I would only have to say that from hearsay.

Q. Well, in the run of cases?

A. I think it was a progressive case; I think it lasted for some time.

Q. In these cases of progressive melancholia is it developed slowly or rapidly?

A. Sometimes slowly; sometimes rapidly.

Q. Do you know whether this case of Mr. Stockmeyer was a slow or a rapid case?

A. It is impossible for me to say, because I know that it lasted already for some time. Others may think it was a rapid case, because when these terrible outbreaks of melancholia come on
234 they say that he becomes crazy then, but it could be traced back for some time.

Q. How long would you say this melancholia lasted before that time?

A. I should say four or five months.

Cross-examined:

By Mr. GRANT:

Q. How intimate were you with Stockmeyer?

A. I was intimate with him. I have been his doctor for years. I came to his room and saw him with Mr. Schroeder.

Q. Did you treat him often?

A. Yes, sir; Stockmeyer had often a cough. I don't remember him being sick so often, but they both were together.

Q. Do you remember when you treated him before you were called in for consultation?

A. Well, I know I met him very often. If I did not meet him in the house I met him on the street.

Q. He was in the transaction of his business all the time until about a week before his committal to the Louisiana Retreat?

A. Yes, sir; he was.

Q. You simply noticed that he was more quiet than usual?

A. Well, Mr. Stockmeyer was a very quiet man. If he did not know a man well he had nothing to say to him; but when that thing occurred that matter struck me, because often when we were

sitting together and a question asked him he would snap and walk away; was offended easy.

235 Q. These circumstances came to your mind afterwards?

A. Yes, sir; that he acted strange at the time, but nobody thought of it until he got sick afterwards.

Q. Nothing occurred to lead you to believe that he was insane?

A. No, sir; but he acted strange, that I know.

Q. But he was always a strange man?

A. Well, but not so much as that.

Re-examined.

By Mr. GOLDTHWAITE:

Q. You say he acted strangely and was a strange man. Were there any evidences of it?

A. No, sir; but if you saw Mr. Stockmeyer you would say he was a very strange man—very quiet. He had nothing at all to say, except he knew him intimately. He would not all times speak to a man.

Q. Was his circle of acquaintance small?

A. Well, the circle of his intimate friends was small.

(Signed) DR. F. LOEBER.

*Deposition of Doctor A. W. Smythe.*

Doctor A. W. SMYTHE, a witness produced, sworn, and examined on behalf of complainant, says:

By Mr. GOLDTHWAITE:

236 Q. How long have you been a practicing physician in the city of New Orleans?

A. About twenty-eight years.

Q. Did you know the late Edward F. Stockmeyer?

A. Yes, sir.

Q. How long had you known him?

A. By calling to see him in the Louisiana Retreat under an order of court.

Q. Are you one of the physicians who made and signed that report which was submitted to the court in the interdiction proceedings against Mr. Stockmeyer?

A. Yes, sir.

Q. Did you make an examination of the condition of Mr. Stockmeyer at that time?

A. I called on him at the Louisiana Retreat and found that he was indisposed to hold any communication with me at all in any way. He did not want to recognize me. He did not seem to comprehend what business I had there or what he was himself there for. But I could only judge from the way in which he acted that he was decidedly insane.

Q. What was he suffering from?

A. Well, at the time that I saw him he seemed to be wholly indisposed to act in a rational way about anything.

Q. In what class of diseases would you place him?

A. I judge that he was insane, and, from the history that I got, it was melancholia with delusion. At least there were the
237 prominent manifestations of the deranged intellect.

Q. Was it a well-marked case?

A. A well-marked case.

Q. Have you had experience with these cases of melancholia?

A. No, sir; no great experience.

Q. Have you had such experience as would enable you to testify to the case being progressive or acute?

A. The case was chronic, as I learned from the history. He had been in the Louisiana Retreat for months previous to the time I saw him. Acute melancholia run rapid courses.

Q. Was this a chronic case or an acute case?

A. It was a chronic case.

Q. You say an acute case of melancholia runs a rapid course?

A. Runs a rapid course. It runs, as Doctor Shepard here says, in recovery or death or to a chronic state within a few months of its origin.

Q. How about a chronic case?

A. A chronic case has no period; it may last a year or it may last ten.

Q. A chronic case of melancholia is in effect a disability of the mind to perform its proper functions and to grasp the affairs of business, or is its effect simply to weaken the understanding and reasoning faculties?

A. I think it destroys the judgment and causes erroneous action. It is not simply a weak or childish but an erroneous and wrong judgment.

238 Q. Was there anything in this case which would indicate to you how long Mr. Stockmeyer had been afflicted?

A. It is impossible from looking at a patient of that kind to tell how long he has been ailing and how long he is going to be ailing. I can only come to a conclusion by taking the whole history of the case into consideration. Commencing at the time of his entrance into the insane asylum up to the time then—I judge from that the time it begun. My impression is that it began much earlier than his friends or the record or history of the case would give as the beginning of his disease. I think it began gradually for a year at least previous to the discovery that he was really insane.

Q. Did you notice any marked peculiarity in his expression at the time you saw him?

A. Yes, sir; there was a sadness and expression of despair about him.

Q. Did you have any conversation with him?

A. He would not have any conversation with me.

Q. Was there any manifestation to you of delusion?

A. He was totally unable to comprehend the situation in which he and I were placed. I was there to examine into his mental

faculties, and he was not disposed to appreciate my efforts in his behalf. He was incapable of comprehending the situation which he was placed in or what I came there for or anything in connection with it.

239 Q. From your knowledge of these cases, how long does it take the mind to decay to that state when it results in imbecility or entire obliquity?

A. How long it takes in these cases for the mind to decay? At the time of his death or at the time of his being put into the Retreat?

Q. Well, from what your testimony has been, I judge that his mind had pretty well decayed when you saw him.

A. Yes, sir; but I should judge, in chronic cases of that kind—progressive insanity coming on without any known cause—that its progress might be estimated as beginning as long previous to his admission into the asylum as from the time of his admission until his death. In a case of chronic insanity coming on without any known cause a blow on the head, accidents, depressing causes, etc., may hasten on; but insanity coming on without any known cause, chronic at the time of its existence previous to confinement in the asylum, is equal to the time when confinement in the asylum commenced up to the time of his death.

Cross-examined.

By Mr. GRANT:

Q. When does insanity become chronic?

A. When it manifests itself without any apparent evidence of progress—when it manifests itself. When you make out that it exists and it shows no apparent evidence of progress, then it is chronic; it is not acute or a display.

240 Q. Then it does not depend upon the character of the evidence of it?

A. An acute disease is a progressive disease. A chronic disease is unprogressive, although in reality it is progressive; but "chronic" and "acute" are only used to express extremes; but an acute disease is a disease running a quick, rapid course. Chronic is a disease running a slow course—so slow that the changes are from day to day and are not apparent. They can only be judged of by intervals of time, so that I should say when the disease is manifest without apparent progress or change it has become chronic.

Q. And that without regard to the time elapsing between the manifestations of insanity and death?

A. Yes, sir. A quick running disease would be an acute running disease. The quickness of it would declare it to be acute and opposed to chronic. A chronic change is generally a change of structure, taking the change slowly and gradually, while in acute the changes occur quickly by accidents, depressions, etc; and I should judge that in Stockmeyer's case it was a slow structural change.

Q. It is not certain to the medical mind in any one case, until

after the death of the patient, whether he has suffered from a chronic or an acute disease?

A. Yes, sir; it is apparent that it is a chronic trouble previous to death, but a quick theft would imply an acute process going on—quick, as opposed to slow or gradual.

241 Q. Can you tell on the first manifestations of the disease whether it is a quick or a chronic case?

A. Doubt about the origin or period or time of the origin implies a chronic trouble.

Q. What I mean is this, that it is not certain that it is a chronic disease.

A. Yes, sir; I think so. To determine the exact time when insanity begins implies—doubt as to the exact period of the origin would be conclusive that the trouble was of a chronic nature and would run a slow course; hence there would be no way to say when it did begin. Acute diseases have a more or less fixed time of their beginning.

Q. Then in chronic cases it is very difficult to tell when they do begin?

A. Yes, sir; that is the trouble about these cases.

Q. All you know is from certain phenomena resulting from the disease?

A. Yes, sir.

Q. What is the source or cause of melancholia?

A. Well, I will tell you about that.

Q. I want to know whether it results from a structural change or results from other causes which may be traced to the nervous system.

A. We are compelled to believe that a structural change is at the base of all mental derangement; that abnormal structural changes occur.

242 Q. In the brain?

A. In the brain.

Q. Might it exist from other causes, such as derangement of the liver, stomach, or other organs of the body?

A. Temporary depression, temporary melancholia, may exist from pain, from indigestion, from cholic, but insanity is a structural change. It may have its origin in indigestion; that the brain requires nutrition there can be no doubt, and if the blood is not supplied to it containing the material required for keeping up the change of structure constantly going on in the brain no structural change takes place, and the disease in that way could be brought about.

Q. Then all human beings are subject to the same causes, more or less, which produce melancholia?

A. Yes, sir; the brain is the instrument that records vibratory impressions.

Q. I want to know whether all mankind is not more or less subject to the causes of melancholia which may or may not develope into what is commonly called insanity or mental aberration of mind.

A. No, sir; all men are subject to attacks of melanchloia, but it is very, very rarely that it leads to insanity.

Q. In most cases they recover?

A. Well, they get over these attacks. The history of comic actresses and, I am told, the history of all men who are able to impress others very strongly with mirth are subject to corresponding
243 attacks of melancholia in consequence. Melancholy reaction always follows excessive hilarity.

*Deposition of Adolphe Woeste.*

United States Circuit Court, Eastern District of Louisiana.

EDWARD F. STOCKMEYER, by CARL STOCKMEYER,
*vs.*
CHARLES P. MCCAN *et als.* } No. 11224.

Testimony on behalf of the complainant resumed this 5th day of March, 1887, the witnesses being sworn and the testimony being written by H. Langford, notary public.

Present: Alfred Goldthwaite, Esqr., solicitor for the complainant; William Grant, Esqr., solicitor for the defendants.

ADOLPH WOESTE, a witness produced, sworn, and examined on behalf of complainant, deposes and says:

By Mr. GOLDTHWAITE:

Q. Did you know the late Edward F. Stockmeyer?

244 A. Yes, sir.

Q. How long had you known him?

A. I had known him since 1854, fully thirty years.

Q. Were you intimate with him?

A. Yes, sir.

Q. On or about the 20th February, 1884, did you have anything to do with placing him in the Louisiana Retreat?

A. Well, not directly. We sent for the doctor. Doctor Loeber did that.

Q. You are one of the friends that suggested sending for Dr. Loeber?

A. Yes, sir.

Q. What was his condition at that time?

A. He was out of his mind—completely out of his mind.

Q. How long before that had he attracted your attention as being out of his mind?

A. Well, I cannot tell you exactly about the number of days, but it was only a very few days before.

Q. What was the character of his trouble?

A. Money trouble. He found himself all of a sudden out of money that he did not expect to be short of.

Q. How did he manifest his trouble—how did it appear?

A. Exaggerated talk; exaggerating his affairs and condition; coming to my office and falling on his knees on the sofa and crying, as I was told afterwards, lunatics do. It was altogether
245 different from his usual character; complaining that he was ruined, and that he had been robbing and stealing and had ruined Mrs. Kirchoff.

Q. Had he been suffering from any disease?

A. No, sir; not that I know of.

Q. What kind of a man was he, ordinarily?

A. Very quiet. He did not talk much, but when he talked with his intimate friends he used to be very witty, and was a very smart man.

Q. Was his behavior different from what it usually was during the days about the 20th February?

A. Yes, sir; decidedly. He was excited, constantly trembling, and running away from everybody. He would come to his office and then want to go out. I would have to coax him to stay there. He said one day he wanted to go to the post office and I went with him. He opened the box, and as soon as I turned around he left it open and did not take anything out, so I told him to take his letters, and then he only took about one-half in his pocket, leaving the rest in the box. Then I took hold of him, saying, "Come home;" and he said, "Never you mind; I am not going to the river; I have been there." He was under constant excitement; and, coming back along Carondelet street, he ran away from me to his own office. I think it was the next morning when the great excitement broke out, when Mr. Schroeder had been telling me that he had passed a quiet night, and thought he was better.

246 Q. You say that was about two or three days before the 20th February?

A. I cannot swear to dates. The 20th February—I don't know.

Q. That was the very day you put him into the asylum?

A. If that was the day this was one day before—the day we had him in the asylum. It was the day I had that affair with him in his office.

Q. Did you know anything about his business?

A. Not much. I knew that he had advanced money to the plantation of Mr. Godbery, and he had charge of Mrs. Kirchoff's money matters. He always took things very easily. He must have had $100,000. He was, if anything, lazy; he left his nephew to write out checks, etc. That is what first brought him to his senses, when he found there was no more money there; that was the first shock.

Q. Had he much business capacity?

A. He had great business capacity, but he did not do much business. He advanced money to the Godberys. When he told me the fix he was in he said, "I promised Godbery to furnish him with the means to carry on his plantation for the next year." (He was a man whose word was as good as his signature); and he said, "I am bound to find the money for that;" and he rushed out.

Q. When was that?

A. That was the beginning of it; a few days before we sent him

to the asylum—a few days. I cannot say how many; but
247 from that moment he was gone. He was found at the corner of Baronne and Gravier streets looking up at my office, and I came down and asked him what he was doing there, and he said, "What will become of me! what will become of me! nobody will, take me!" Then he considered that everything was lost; that was his idea.

Q. Did he speak anything to you about this matter of the McCan mortgage?

A. No, sir. I don't know anything about that.

Q. Could you tell what his condition was in the December or January before the 20th February?

A. There was nothing strange about him.

Cross-examined.

By Mr. GRANT:

Q. Did you see him often during December and January?

A. Yes, sir; I saw him often.

Q. Did he appear to be in his natural mind?

A. Yes, sir; in his natural mind. He was a man the same as if he was struck by lightning when that came upon him; and he had relatives in Germany to whom he gave support, and all that came upon his mind, and that he had the money of Mrs. Kirchoff, and that everything was lost.

*Deposition of E. W. Huntongton.*

248 E. W. HUNTONGTON, a witness produced, sworn, and examined on behalf of the complainant, says:

By Mr. GOLDTHWAITE:

Q. Were you the attorney of Mr. Edward F. Stockmeyer?

A. Yes, sir.

Q. Do you know anything with reference to Mr. Stockmeyer granting precedence to Charles P. McCan over the pledged notes that he held which operated as a first mortgage upon the Angelina plantation?

A. I know it to be a fact from the act of mortgage itself, by which act the mortgage of Mr. Stockmeyer was made subordinate to the mortgage of Mr. McCan.

Q. Were you consulted with reference to that matter before it was done?

A. Yes, sir.

Q. By whom?

A. Consulted by Edward F. Stockmeyer.

Q. About what time?

A. Just before the act was passed.

Q. Do you remember what advice you gave him on that occasion?

A. If my recollect- serves me right, I was opposed to it; that I advised him against it. My memory is not very clear upon that point, because it is three years ago. It was in 1884 when the act was passed

Q. Was there any other precedence given to any other mortgagee in any other transaction of Stockmeyer?

249 A. In this case?

Q. No; not in this case; but in any other case was precedence granted in favor of anybody else?

Mr. Grant objects to the question.

Q. You mean at that time or subsequently?

A. I think there was a subordination made in favor of Lehman, Abraham & Co.—two of them—but that could be shown best by the acts themselves.

Q. Did you give advice with reference to that matter?

A. Yes, sir; and I was also opposed to them.

Q. What was the result in that matter?

A. The subordination was granted.

Q. Has it been closed up?

A. The property was seized and sold. The mortgage of Stockmeyer was foreclosed after the notes were sold. The notes were sold to Emile Legendre under the advice of a family meeting for $10,000.

Q. What was the amount of these notes?

A. They amounted to over $60,000. You mean the Terre Haute plantation notes?

Q. Yes.

A. They amounted to more than $60,000.

Q. And Stockmeyer realized $10,000?

A. Yes, sir; $10,000.

Q. Do you remember what time that precedence was given to Lehman, Abraham & Co.?

250 A. That will appear from these acts. I do not recollect it. You will find it in the record of the case of Lehman, Abraham & Co. against Godbery, tried some time ago.

Q. What was the mental condition of Stockmeyer about January, 1884?

A. I can only say, in answer to that question, that he acted very strangely to me in his business matters. I thought there was a change in the man mentally and intellectually, or that he had become extremely eccentric.

Q. How long had you known him?

A. At least twenty-five years.

Q. Had his condition materially changed from what it had been?

A. I thought so.

Cross-examined.

By Mr. GRANT:

Q. In what respect was the change?

A. Before that time he had been very sociable with me. I was very intimate with him and about this time he appeared to avoid me and avoided his companions whom he formerly had been with a great deal. He used to be very communicative and very companionable and then afterwards he seemed to have vague ideas and notions about things. I did not think that his perceptive faculties were as acute as they had formerly been and I thought there was a change in his business capacity. At one time I looked upon him as a very intelligent business man. Then, again, he spoke
251 to me frequently as if he had committed some great crime; that he had done a wrong—a wrong which he never could repair. I mean in business transactions. He spoke about Mrs. Kirchoff's matters that he had charge of, and that he had acted dishonestly towards her, which was not a fact. I could not divest his mind of that idea. I used to reason with him about it.

Q. You had no reason to believe that he was insane, or you would call his friends together to confine him?

A. Well, I cannot say. If I was asked to define insanity I would decline to do it. Even the doctors disagree upon what insanity is.

Q. Do you not know that a great many people—business men—here have been in the habit of giving preferences and priorities, just as Stockmeyer did?

A. I cannot say that. I have no positive knowledge of that fact. I have no doubt the thing is frequently done. These factors could tell you more about that than I could. I never had any transaction of that kind except those brought to my knowledge by my being consulted about them.

*Deposition of Alf. Goldthwaite.*

ALFRED GOLDTHWAITE called and, being duly sworn, says:

252 I was employed in this case about the latter part of April, 1885, having been spoken to soon after the sale under executory process. Nothing was done towards filing the bill that summer on account of my absence from New Orleans, but the bill was drawn in the fall months and filed in January, 1886.

Mr. Goldwaithe offers in evidence a statement of the account of Edward F. Stockmeyer, marked "W," which is accepted by Mr. Grant, for the defendants, as correct.

It is agreed that the depositions which have not been signed, on account of the absence of the witness or otherwise, may be used with like effect as if they had been signed.

*Statement of Account, Marked Exhibit "W."*

Mess. H. & G. Godbery, Angelina plant., in acc't with Ed. F. Stockmeyer & Co.

| | |
|---|---|
| Amount due by H. & G. Godbery, January 24th, 1884 | $38,056 15 |
| Collected since, proceeds of rice, etc., up to July 19th, 1884 | 6,598 19 |
| | $31,457 96 |

253 *Defendants' Evidence.*

Exhibits marked "L" and "M" in connection with deposition of Henry Godbery.

EXHIBIT "L."

ANGELINA PLANTATION, *Sept. 27th*, '84.

Mr. C. P. McCan.

DEAR SIR: We send document signed, by acknowledging receipt of same, per bearer.

Oblige, yours,

(Signed) H. & G. GODBERY.

EXHIBIT "M."

Whereas Charles P. McCan, of the city of New Orleans, has, under a contract entered into on January 25th, 1884, before Andrew Hero, Jr., notary public, with Henry and George Godberry, made certain advances to them for the cultivation of crops on the Angelina plantation, in the parish of St. John the Baptist, in this State, during
254 the year 1884; and whereas further advances are now required to gather and save the said crops—

It is hereby agreed that the said Charles P. McCan shall have a lien and privilege upon said crops for such advances and supplies furnished or made by him as may be necessary to gather and save said crops—

It being understood that the first moneys received by said McCan from the sales of said crops shall be first applied by him in payment of the advances and supplies made and furnished to gather and save said crops, and the balance of proceeds of said sales of crops shall be applied by him to extinguish the indebtedness of said Henry and George Godbery to him for advances made by him under said contract of January 25th, 1884.

(Signed) GEO. GODBERY.
HENRY GODBERY.

*Agreement at Foot of Exhibit "M," Marked "N."*

We, the undersigned holders of notes secured by mortgage upon said Angelina plantation, hereby take notice of the foregoing agreement and consent to the same and agree that the proceeds of the sale of said crops shall be applied as therein stated.

(Signed) ED. F. STOCKMEYER & CO.
NOELIE GODBERY.
LAURA GODBERY.

255 *Deposition of Andrew Hero.*

United States Circuit Court, Eastern District of Louisiana.

EDWARD F. STOCKMEYER, by CARL STOCKMEYER,
*vs.*
CHARLES P. MCCAN *et als.* } No. 11224.

Testimony taken on behalf of the defendants, at the law office of Rouse & Grant, Esqrs., No. 312 Carondelet street, the witnesses being sworn by Henry Langford, notary public, duly commissioned and qualified to take depositions under the act of Congress.

NEW ORLEANS, *February* 25, 1887.

Present: William Grant, Esqr., solicitor for defendants; Alfred Goldthwaite, Esqr., solicitor for complainant.

ANDREW HERO, Jr., a witness, produced, sworn, and examined on behalf of the defendants, deposes and says:

By Mr. GRANT:

Q. What was your business in the year 1884?
A. Notary public, parish of Orleans.
Q. Were you acquainted with Charles P. McCan and Edward F. Stockmeyer?
256 A. Yes, sir; I was.
Q. How long had you known them?
A. I had known Mr. Stockmeyer by sight, having met him in business during the first fifteen or twenty years, and I had known Mr. McCan for about ten years.
Q. State whether the certain act of mortgage was passed before you on the 24th of January, 1884, to which the Brothers Godbery, Edward F. Stockmeyer, and Charles P. McCan were parties.
A. There was such an act, as also another act between the Misses Godbery and Mr. Stockmeyer which was part and parcel of the same transaction, but was written on a separate piece of paper for lack of room in the act of mortgage.
Q. What act was that?
A. That was an act by which the Misses Godberry in a formal manner made a pledge to Stockmeyer of notes belonging to them bearing on the Angelina plantation, he consenting and expressing therein an extension of payment of the indebtedness due by the plantation to him, Mr. Stockmeyer.
Q. Did you have any intercourse with Stockmeyer prior to the execution of that act of January 24th in relation to the business?
A. Only on the morning that the acts were executed, prior to the arrival of the Godberrys.
Q. What took place between yourself and Mr. Stockmeyer that morning prior to the execution of this act?

A. Mr. Stockmeyer brought me these Godberry notes be-
257 longing to the ladies, of which he had possession before, as I understood, by simple manual delivery, and stated that he brought them in connection with the transaction that was to be made for the then current year with Mr. Can; that he was to receive interest from McCan on the amount due him by the Godberrys, and an extension was to be given to the Godberry boys of the payment of the indebtedness due by them to him, and that his claim (so far as his own indebtedness as he was pledgee of the notes of the Misses Godberry was concerned) should be made subordinate to the claim that would accrue or arise in favor of McCan. He asked to see the acts which had been prepared from instructions received the day before, or some days before, from McCan and one of the Godberry boys. He read the act which is signed by the Misses Godberry and himself, solely relating to matters of the pledging of the notes and the indebtedness, and also that part of the act of mortgage whereby he grants priority to the McCan mortgage. The other portion of the act of mortgage I explained to him, he stating that he only wished to read the last portion where he was directly concerned.

Q. Did you notice anything peculiar about his conversation?

A. Nothing peculiar at all. He presented the same appearance to me as he did present on the half dozen different occasions that he had business transactions with me on other matters.

Q. Did he show any signs of mental disturbance?

A. No, sir.

258 Q. Was his conversation consecutive and intelligent?

A. Mr. Stockmeyer—according to all the dealings that I had with him—was a man never given to much conversation. He would ask for that which he wanted, look at it, thank you for it, and go away. That was his conduct according to the various interviews I had with him on business matters. In this case he stated the transaction that he had. He asked to see the papers, read his own act and a portion of the other act, expressed his satisfaction, and waited until the other parties came in. Then the acts were read, the parties in his presence signed, and the said interest was paid to him.

Q. Did he say anything which showed he was in a despondent or melancholy mood of mind?

A. No, sir.

Q. Was there anything that would indicate to you that his mind was unsound at that time?

A. Not the slightest. I was surprised when I heard many months afterwards that he was insane, and that it was stated that he was in such a state at the time of the execution of this act.

Q. And he told you he was to receive from McCan certain interest?

A. That was the consideration for his granting the extension of the debt to the Godberrys and consenting that the priority of privilege should be given to McCan, with the hope, that all
259 planters do have, that in the coming year they would be better able to discharge their indebtedness.

Mr. Grant, solicitor for defendants, offers the check marked "McCan 1" in evidence.

And Mr. Goldthwaite, for complainant, admits that the check bears the endorsement of Carl Stockmeyer, who held the *per pro* of Edward F. Stockmeyer.

Q. Are you familiar with the signature of D. C. McCan & Son?

A. Yes, sir. That is the signature of D. C. McCan & Son (on the check), written in the handwriting of Charles P. McCan.

Q. Were you present at the time a certain protest was served on C. P. McCan, in the case of C. P. McCan against George and Henry Godberry, No. 197, twenty-sixth judicial district court, parish of Saint John the Baptist?

A. Yes, sir; I was present at the court-house at the moment he received it.

Q. At what hour was that protest served?

A. I think it was eleven or a quarter past eleven or somewhere in the vicinity of eleven o'clock.

Q. Was that the day of the sale?

A. The very day of the sale—just prior to the sale taking place. Charley McCan then wrote in lead pencil on that paper, at my advice, the hour of the service. I was there as his adviser and friend.

Q. How far is the Angelina plantation from the court-house?

A. I think that plantation is about—or it seemed to be that day about—ten miles' riding, but it is certainly three railroad
260 stations from the station at which you alight to go to the court-house. I thought it was about eight or ten miles. I drove over there that same day.

Q. Are you certain it was several miles?

A. Yes, sir; it took us an hour and a half to drive there—in a large bend of the river there.

Q. Is the court-house on the same side of the river?

A. No, sir; it is on the other side.

Q. The court-house is on the opposite side of the river from the plantation.

A. Yes, sir; the plantation is an hour and a half or two hours' drive from the court-house, and is on the left-hand ascending bank of the river.

Cross-examined.

By Mr. GOLDTHWAITE:

Q. Did you have more than one conversation with Mr. Stockmeyer with reference to this matter?

A. Only on that morning. He came and brought me the notes relative to this transaction.

Q. By whom were you employed to draw this act?

A. By McCan; and I think one of the Godberry boys came in as the two parties to the transaction, stating what the nature of it was to be. That he, McCan, on one or two occasions had told me

in advance of his intention to run the Angelina plantation for
261 that year, and had asked me what he should do as to having a preference over Stockmeyer, and his desire to have the first mortgage on the place for the advances he intended to make; and these advances were intended to improve the place, besides running it.

Q. At what time in the day was it that Stockmeyer came to see you?

A. between nine and ten o'clock in the morning.

Q. What time was the act passed?

A. About that time in the day—early in the morning.

Q. You say he was not a man of much conversation?

A. No, sir—that is, so far as the business he has ever had with me in my life which has been connected with papers.

Q. Was he a man of much conversation that morning?

A. No, sir; only such words as were necessary to convey his business ideas of this thing.

Q. Did he come with any one?

A. No, sir.

Q. Was any one present when you had this conversation with him—I mean any of the other parties to this transaction?

A. No, sir; when he first came in he came by himself, I think. He was there afterwards.

Q. And you say you read over to him only that portion of the act which referred to his business?

A. The act of mortgage—I explained to him the first portion and he read only that portion which referred to his business,
262 as he said that was all that he wished to know about it, but the first act between him and the two girls he read himself.

Q. I mean with reference to the act between all the parties.

A. The act between all the parties—I explained to him that it was a mortgage which gave a certain preference for money advanced, and he said, "I only want to see my part of it."

Q. When you say he read that portion of the act which referred to his business, about how much of the act was it?

A. Above the last words, where it reads Done and passed, wherein it states that he appeared and was a party to the act.

Q. Subsequently, when he signed the act, was it read over to him?

A. When the act was signed it was read over to all the parties in the manner that all acts are read in a notary's office, stating the salient points of it—the proportions of the debt, the property mortgaged, the intervention by the Misses Godberys and his intervention; but all that portion in print is never read to any person nor is it ever read; they take it for granted that that part is all right.

Q. Then the portion in print was never read over to him?

A. Never read over to anybody; it was stating what it contains, with the usual strong penal clauses.

Q. Do you know of his having any knowledge of that act except what he derived in your presence?

A. Only that I know McCan's statement to me anterior.

Q. How long prior to the signing of this act had you any business with Mr. Stockmeyer?

263 A. That would be very hard to say. I think it was five or six months; about some act that he came into the office; but I seldom met him; he would walk over to the clerk instead of to me and ask for it, but there was nothing in the way of conversation.

Q. Had you met him in conversation, except on that business, within five or six months previous?

A. No, sir; never.

Q. Have you any knowledge of any other consideration being paid to Mr. Stockmeyer for signing this act than the interest which he said he was to receive?

A. I know of nothing else.

Q. Have you any knowledge of any consideration which he received from Mr. McCan or the Godberrys, which was paid to Mr. Stockmeyer or which was to be paid to him?

A. I know of nought, except that Stockmeyer was to receive the interest of his debt, delay the payment of his claim, and consent to waive his rights under the Misses Godberry notes, of which he was the pledgee. I being in doubt that his waiver of the rights under the Misses Godbery notes would suffice, in preparing the papers I caused the Misses Godberry to be parties to the act consenting that their mortgage notes, pledged to Stockmeyer, become secondary to McCan's, and by his signing the act, or knowing of it, it would be an estoppel against him as the holder of these notes under them.

264 Q. From your knowledge derived from McCan and your conversation with Stockmeyer, is it to your belief that there was any consideration other than the interest to be paid?

A. I recollect and know of none other than the interest to be paid him and the customary hope and desire of all planters that the continuance of the plantation would result in benefit to all the parties.

Q. Was that check paid to Mr. Stockmeyer in your presence?

A. Before I came here, without seeing the date of the act, I would have said yes, but seeing the date of the check, I think not.

Q. The act, I suppose, was passed on the day it bears date, the 24th January?

A. Yes, sir.

Q. With reference to the protest which was made on the day of sale, was there any action deferred or any notice or attention paid to the protest?

A. No, sir. I advised McCan to pay no attention to it. I acted as the mover.

Mr. Grant, for the defendants, offers in evidence the draft drawn against C. P. McCan by Henry and George Godberry in favor of Edward F. Stockmeyer, dated January 29th, 1884, for the sum of $1,050, with the endorsement on the back thereof, and marked "McCan No. 2."

He also offers in evidence the check, already produced, whereby payment of the above draft was made by D. C. McCan & Son.

He also offers the account of C. P. McCan, marked McCan No. 3.

Mr. Goldthwaite, for complainant, accepts the account marked "McCan No. 3" as correct and proper.

265 *Draft Marked McCan No. 2.*

$1,050. N. O., *Jan'y* 29, 1884.

At sight pay to the order of Mess. E. Stockmeyer & Co. ten hundred and fifty $\frac{}{100}$ dollars, for int. on ($17,500) dollars until Jan'y 1st, 1885, value received, and charge the same to account of Angelina pl'n.

(Signed) H. & G. GODBERY.

To C. P. McCan, N. O., La.

Endorsed: Ed. F. Stockmeyer & Co.

*Check Marked McCan No. 1.*

No. 499. NEW ORLEANS, *Jan'y* 29, 1884.

New Orleans National Bank.

Pay to the order of E. F. Stockmeyer ten hundred and fifty dollars.

$1,050.00 *dolls.*

(Signed) D. C. McCAN AND SON.

Endorsed: P. p. Ed. F. Stockmeyer, C. Stockmeyer.

Stamped on back: (For deposit to the credit of Ed. F. Stockmeyer & Co.) (Canal Bank, New Orleans.)

*Account Marked McCan No. 3.*

266 Angelina plantation (H. & G. Godberry) in ac. current with C. P. McCan.

Interest @ 8 % per annum to Sept. 15, '84.

| | | Amount. | Days. | Interest. |
|---|---|---|---|---|
| 1884. | | | | |
| Jan'y 28 | To paid G. Godberry | 300 | 232 | 15 47 |
| 29 | " " " | 200 | 231 | 10 27 |
| " | " " s. d., favor E. F. Stockmeyer & Co. | 1,050 | 231 | 53 87 |
| Feb'y 1 | " " " " M. Hackett | 79 57 | 228 | 4 05 |
| " | " invoice | 247 13 | 238 | 12 51 |
| 4 | " paid s. d., favor Geo. Bourgeois | 773 | 225 | 38 65 |
| " | " invoice | 556 51 | 225 | 27 85 |
| 6 | " " | 33 75 | 223 | 1 68 |
| " | " paid s. d., favor H. L. Pierre | 58 50 | 223 | 2 92 |
| 8 | " " str. E. J. Gay, passage 52 deckers | 39 | 221 | 1 92 |

*Account Marked McCan No. 3*—Continued.

| | | Amount. | Days. | Interest. |
|---|---|---|---|---|
| 1884. | | | | |
| Feb'y 13 | To invoice for mules (20) | 3,616 80 | 216 | 173 62 |
| " | " commission for accepting 60 d. d., Martin Thompson & Co., 3,520, 2½ | 88 | 216 | 4 22 |
| " | " invoice | 11 10 | 216 | 53 |
| 16 | " " | 12 74 | 213 | 62 |
| 18 | " paid H. G. Godberry for pay-roll | 1,000 | 211 | 46 89 |
| 19 | " " s. d., favor V. Knair | 200 | 210 | 9 33 |
| 27 | " " str. Jesse K. Bell, freight bills | 13 35 | 202 | 58 |
| 29 | " " H. Godberry for pay-roll | 400 | 200 | 17 78 |
| M'ch 6 | " " Red River & Coast Line freight bills | 5 65 | 194 | 26 |
| " | " invoice | 311 75 | 194 | 13 45 |
| 11 | " paid s. d., favor Geo. Barrgeois | 562 50 | 189 | 23 65 |
| " | " " str. Clinton, freight bills | 5 90 | 189 | 25 |
| 17 | " " A. Hero, Jr., notarial acts | 30 | 183 | 1 22 |
| " | " " s. d., favor Geo. Bourgeois | 200 | 183 | 8 13 |
| 20 | " " " " " | 200 | 180 | 8 |
| 26 | " " G. Godberry for pay-roll | 500 | 174 | 19 33 |
| " | " " s. d., favor J. K. Gourdain | 60 | 174 | 2 32 |
| 27 | " " " " A. Reynaud | 61 80 | 173 | 2 38 |
| April 3 | " invoice | 286 34 | 166 | 10 55 |
| 9 | " paid s. d., favor L. Chenet | 155 50 | 160 | 5 51 |
| 10 | " " G. Godberry | 75 | 159 | 2 65 |
| 11 | " invoice | 242 74 | 158 | 8 53 |
| 12 | " paid for pay-roll, per Belle of the Coast | 450 | 157 | 15 70 |
| " | " " insurance on above, @ ¼ % | 1 13 | 157 | 03 |
| 15 | " " s. d, favor Geo. Bourgeois | 750 | 154 | 25 67 |
| 25 | " " G. Godberry | 25 | 144 | 80 |
| 26 | " " G. C. Forsyth for pay-roll | 500 | 143 | 15 89 |
| 30 | " " s. d., favor J. M. Williams | 268 76 | 139 | 8 25 |
| May 3 | " invoice | 322 89 | 136 | 9 76 |
| | Amounts forward | 13,694 41 | | 605 09 |
| 267 | | | | |
| | To amounts forward | 13,694 41 | | 605 09 |
| 1884. | | | | |
| May 6 | " paid s. d., favor L. Chenet | 180 05 | 133 | 5 32 |
| 8 | " " G. Godberry for pay-roll | 450 | 131 | 13 10 |
| 19 | " " s. d., favor Geo. Bourgeois | 649 70 | 120 | 17 33 |
| 20 | " " " " J. K. Gourdain | 184 38 | 119 | 4 87 |
| 26 | " " " " A. Reynaud | 81 70 | 113 | 2 06 |
| 30 | " " for pay-roll | 500 | 109 | 12 11 |
| 31 | " invoice | 393 41 | 108 | 9 43 |
| June 3 | " paid s. d., favor L. Chenet | 281 40 | 105 | 6 56 |
| 5 | " invoice | 176 43 | 103 | 4 03 |
| 9 | " paid s. d., favor O. Vicknair | 200 | 99 | 4 40 |
| 10 | " " " " bearer | 625 | 98 | 13 61 |
| " | " invoice | 70 10 | 98 | 1 52 |
| " | " paid H. Godberry for pay-roll | 450 | 98 | 9 80 |
| 11 | " " s. d., favor Geo. Bourgeois | 673 25 | 97 | 14 51 |
| 16 | " " " " L. Blouin | 55 | 92 | 1 12 |
| 26 | " " " " L. Goudchaux | 35 | 82 | 64 |
| 27 | " " H. Godberry for pay-roll | 400 | 81 | 7 20 |
| July 2 | " invoice | 371 99 | 76 | 6 28 |
| 3 | " paid s. d., favor L. Chenet | 150 | 75 | 2 50 |
| " | " " " Bienvenu & Ory | 66 65 | 75 | 1 12 |
| 5 | " " " Geo. Bourgeois | 247 | 73 | 4 01 |
| " | " " " G. C. Forsyth | 130 | 73 | 2 11 |

*Account Marked McCan No. 3—Continued.*

| | | Amount. | Days. | Interest. |
|---|---|---|---|---|
| 1884. | | | | |
| July 5 | To paid s. d., A. Millet | 250 | 73 | 4 06 |
| 10 | " " for pay-roll | 200 | 68 | 3 02 |
| 19 | " " s. d., favor Geo. Bourgeois | 125 | 59 | 1 64 |
| 22 | " " " " J. Feuero | 40 | 56 | 50 |
| 23 | " " " " L. Chenet | 45 | 55 | 55 |
| " | " " " " L. Godchaux | 50 | 55 | 61 |
| 31 | " invoice | 18 45 | 47 | 19 |
| Aug't 8 | " paid s. d., favor M. Hackett | 100 | 39 | 87 |
| 11 | " " " " Geo. Bourgeois | 135 | 36 | 1 08 |
| " | " " " G. C. Forsyth | 70 40 | 36 | 56 |
| 14 | " " " " O. Nicknair | 123 45 | 33 | 90 |
| Sept. 1 | " " " " Krebs & Schwartz | 100 | 15 | 33 |
| 4 | " " " " Geo. Bourgeois | 260 | 12 | 69 |
| 5 | " " " " M. Hacket | 125 | 11 | 31 |
| 10 | " " " " G. C. Forsyth | 114 | 6 | 15 |
| 11 | " " " " L. Chenet | 31 50 | 5 | 04 |
| 15 | " " " " B. J. West & Son | 387 81 | 1 | 09 |
| " | " interest, as per margin, favor C. P. McCan | 764 31 | | |
| " | " amount due C. P. McCan this date | $23,005 39 | | 764 31 |

E. & O. E.
New Orleans, September 15th, 1884.

C. P. McCAN.
LEVY.

268 Angelina plantation (H. & G. Godberry) in ac. current with C. P. McCan.
Interest @ 8 % to Jan'y 10, '85.

| | | | | |
|---|---|---|---|---|
| 1884. | | | | |
| Sept. 15 | To balance as per account rendered | 23,005 39 | 118 | 603 24 |
| 19 | " paid s. d., favor John Vanvranken | 12 | 114 | 30 |
| 22 | " " L., L. & Globe Ins'ce Co. on sugar-house | 250 | 111 | 6 17 |
| 24 | " " s. d., favor J. Fener | 65 | 109 | 1 57 |
| 26 | " " " " bearer | 1,500 | 107 | 35 67 |
| 27 | " " " G. C. Forsythe | 83 35 | 106 | 1 96 |
| Oct. 2 | " " Red River & Coast Line freight bills | 4 | 101 | 09 |
| 23 | " " freight bills str. Corona | 59 45 | 80 | 1 05 |
| 28 | " " L., N. O. & T. R. R., freight on cane for Oct. | 183 81 | 75 | 3 07 |
| Nov. 3 | " " for pay-roll per str. Keokuk | 292 | 69 | 4 48 |
| " | " " ins'ce on above @ ¼ % | 73 | 69 | 02 |
| 15 | " " A. Robean for pay-roll | 605 | 57 | 7 66 |
| 29 | " " per remittance (L., N. O. & T. R. R.) | 575 | 43 | 5 49 |
| Dec. 17 | " " per remittance (Mr. Le Bourgeois) | 760 45 | 25 | 4 22 |
| 26 | " " L., N. O. & T. R. R., freight on cane for Nov. | 532 23 | 16 | 1 89 |
| 1885. | | | | |
| Jan'y 10 | " " L., N. O. & T. R. R., freight on cane for Dec. | 494 16 | 1 | 11 |
| " | " " interest b'l'ce as per margin | 604 89 | | 676 99 |
| | | 29,027 46 | | |

| | Credits. | | | |
|---|---|---|---|---|
| 1884. | By sales cane, L. Godchaux, $606\frac{12}{2000}$ tons, $412\frac{1}{2}$ | 2,503 15 | 57 | 31 70 |
| Nov. 15 | | ✓ | | ✓ |
| 25 | " sales cane, L. Godchaux, $286\frac{1570}{2000}$ tons, $412\frac{1}{2}$ | 1,182 98 | 47 | 12 35 |
| Dec. 6 | " sales cane, L. Godchaux, $288\frac{1270}{2000}$ tons, $412\frac{1}{2}$ | 1,190 61 | 36 | 9 53 |
| 10 | " sales cane, L. Godchaux, $262\frac{1485}{2000}$ tons, $412\frac{1}{2}$ | 1,083 80 | 32 | 7 71 |
| 20 | " sales cane, L. Godchaux, $330\frac{990}{2000}$ tons, $412\frac{1}{2}$ | 1,894 32 | 22 | 9 26 |
| 27 | " sales cane, L. Godchaux, $112\frac{1560}{2000}$ tons, $412\frac{1}{2}$ | 465 21 | 15 | 1 55 |
| 1885. | | | | |
| Jan'y 10 | " interest bill favor C. P. McCan, car'd to debit of ac. | ✓ | | 604 80 |
| " | " balance ac. below due C. P. McCan | 20,707 39 | | |
| | | 29,027 46 | | 676 99 |
| 1885. | | | | |
| Jan'y 10 | To balance brought down, due C. P. McCan | | | $20,707 39 |

E. & O. E.
New Orleans, Jan'y 10, '85.

C. P. McCAN.
LEVY.

269 Complainant's admissions as to account, see page 264 of this Transcript.

*Decree. Entered and Filed March* 18, 1887.

United States Circuit Court, Eastern District of Louisiana.

EDWARD F. STOCKMEYER, by His Curator,
*vs.*
CHARLES P. McCAN *et als.*
No. 11224.

Decree.

This cause came on to be heard on the evidence and was argued by Mr. Alfred Goldthwaite for the complainant and by Mr. William Grant for the defendant, whereupon, the court considering that Mr. Edward Stockmeyer, prior to making the contract with McCan, consulted with his counsel and his business partners, and that the advantages of the contract to said Stockmeyer outside of the interest paid depended on future events, and that McCan acted in good faith, and that the alleged irregularities in the forced sale of the
270 property are not insisted upon as a basis of relief, it is ordered, adjudged, and decreed that the complainant's bill be dismissed with costs.

March 18th, 1887.
(Signed) DON A. PARDEE, *Judge.*

*Petition and Order for Appeal. Entered and Filed 6 May, 1887.*

U. S. Circuit Court, Eastern District of La.

EDWARD F. STOCKMEYER
*vs.*
CHARLES P. MCCAN and Others. } No. 11224.

To the hon. the circuit court of the United States for the eastern district of Louisiana:

The petition of Carl Stockmeyer, testamentary executor of Edward F. Stockmeyer, deceased, with respect represents that there is error to his prejudice in the final decree herein rendered, and he prays to be allowed an appeal.

Wherefore he prays that an appeal be allowed, returnable to the next term of the Supreme Court of the United States, to be held in Washington city on the second Monday of October, 1887, and that Mary G. Tobin, individually and as natural tutrix of her minor children, Kate Elizabeth, Fannie Tobin, David Chambers
271 Hester Margaret, and —— McCan, an infant, whose name is not now known to petitioner, Henry Godberry, George Godberry, Laura Godberry, Noelie Godberry, and Edward F. Le Bourgeois be cited to appear and answer said appeal; and petitioner prays for general relief.

(Signed) A. GOLDTHWAITE.
*Sol. for Pl'ff.*

*Order.*

An appeal is granted as herein prayed for on the petitioner giving bond in the sum of three hundred dollars, according to law, returnable to the next term of the Supreme Court of the United States, to be held in Washington city on the second Monday of October, 1887.

New Orleans, May 6, 1887.

(Signed) DON A. PARDEE, *Judge.*

*Bond for Appeal. Filed June 1, 1887.*

UNITED STATES OF AMERICA:

Know all men by these presents that we, Carl Stockmeyer,
272 testamentary executor of Edward F. Stockmeyer, deceased, and Edward W. Huntington are held and firmly bound, jointly and severally, unto Mary G. Tobin, widow of Charles P. McCan, deceased, individually and as natural tutrix of her minor children, George Godberry, Henry Godberry, Laura Godberry, Noelie Godberry, and Edward F. Le Bourgeois, in the sum of three hundred dollars, lawful money of the United States of America, to be paid to the said Mary G. Tobin, widow of Charles P. McCan, individually and as natural tutrix of her minor children, George Godberry, Henry Godberry, Laura Godberry, Noelie Godberry, and Edward F. Le Bourgeois, or either of them, their heirs, executors,

administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 31st day of May, in the year of our Lord eighteen hundred and eighty-seven.

Whereas the said Carl Stockmeyer, testamentary executor of E. F. Stockmeyer, having heretofore, to wit, on the 6th day of May, 1887, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the — day of ——, 1887, by the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of Edward F. Stockmeyer, by his curator, Carl Stockmeyer, *vs.* Charles P. McCan and others, No. — of the docket thereof:

Now, the condition of the above obligation is that if the
273 above-bounden Carl Stockmeyer, testamentary executor, &c., shall prosecute his said appeal to effect and shall answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Signed, sealed, and delivered in the presence of—

(Signed) CARL STOCKMEYER,
*Testamentary Executor of Ed. F. Stockmeyer.* [L. S.]
E. W. HUNTINGTON. [L. S.]

Bond accepted.

(Signed) DON A. PARDEE, *Judge.*

Surety satisfactory.

(Signed) ROUSE & GRANT, *For Appellee.*

274 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 273 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of Carl Stockmeyer, testamentary executor of E. F. Stockmeyer, *vs.* Chas. P. McCan *et als.*, No. 11224 of the docket of the said court.

Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.

Witness my hand and the seal of said court, at the city of New Orleans, this 18 day of July, A. D. 1887.

E. R. HUNT, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at

the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 18 day of July, A. D. 1887.

EDWARD C. BILLINGS, *Judge.*

275 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Mary G. Tobin, widow of Charles P. McCan, deceased, individually and as natural tutrix of her minor children, Kate Elizabeth, Fannie Tobin, David Chambers, Hester Margaret, and —— McCan, an infant, whose name is not now known to petitioner, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition for appeal and order filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Carl Stockmeyer, testamentary executor of Edward F. Stockmeyer, complainant, is appellant and Mary G. Tobin, individually and as natural tutrix of her minor children, Kate Elizabeth, Fannie Tobin, David Chambers, Hester Margaret, —— McCan, an infant, whose name is not now known to petitioner; Henry Godberry, George Godberry, Laura Godberry, Noelie Godberry, and Edward F. Le Bourgeois are defendants and appellees, to show cause, if any there be, why the decree rendered against the said Carl Stockmeyer, testamentary executor of Edward F. Stockmeyer, as in said petition for appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 2 day of June, in the year of our Lord one thousand eight hundred and eighty-seven.

DON A. PARDEE, *Judge.*

276 [Endorsed:] Mary G. Tobin, widow of Charles P. McCan. United States circuit court, eastern district of Louisiana. No. 11224. Carl Stockmeyer, testamentary executor of E. F. Stockmeyer, *vs.* Charles P. McCan *et als.* Citation. No. —. U. S. circuit court, eastern district of Louisiana. Filed June 3, 1887. E. R. Hunt, clerk.

*Marshal's Return.*

Rec'd June 2, 1887, & on the 2 day of June, 1887, I served a true duplicate of the within citation on Mary G. Tobin, widow of Charles P. McCan, deceased, by handing the same to her in person in the city of New Orleans, La.

R. B. PLEASANTS,
*U. S. Marshal, E. D. of La.*
JNO. BAKER,
*Dep-ty U. S. Mar.*

I, John Baker, being duly sworn, do depose and say that I am the lawful deputy of R. B. Pleasants, U. S. marshal of the eastern district of Louisiana, and that the service, as above stated, was made by me and is correctly stated.

JOHN BAKER.

Sworn to and subscribed before me this 3rd June, A. D. 1887.

T. McC. HYMAN,
*Commissioner United States Circuit Court,*
*Eastern District of Louisiana.*

277 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Henry Godberry, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition for appeal and order filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Carl Stockmeyer, testamentary executor of Edward F. Stockmeyer, complainant, is appellant and Mary G. Tobin, individually and as natural tutrix of her minor children, Kate Elizabeth, Fannie Tobin, David Chambers, Hester Margaret, —— McCan, an infant, whose name is not now known to petitioner; Henry Godberry, George Godberry, Laura Godberry, Noelie Godberry, and Edward F. Le Bourgeois are defendants and appellees, to show cause, if any there be, why the decree rendered against the said Carl Stockmeyer, testamentary executor of Edward F. Stockmeyer, as in said petition for appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 2 day of June, in the year of our Lord one thousand eight hundred and eighty-seven.

DON A. PARDEE, *Judge.*

278 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 11224. Carl Stockmeyer, testamentary executor of E. F. Stockmeyer, *vs.* Charles P. McCan *et als.* Citation. Marshal's return, —.

I waive service of citation and of petition of appeal.
June 3d, '87.

HENRY GODBERY.

279 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to George Godberry, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Wash-

ington on the second Monday of October next, pursuant to a petition for appeal and order filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Carl Stockmeyer, testamentary executor of Edward F. Stockmeyer, complainant, is appellant and Mary G. Tobin, individually and as natural tutrix of her minor children, Kate Elizabeth, Fannie Tobin, David Chambers, Hester Margaret, —— McCan, an infant, whose name is not now known to petitioner; Henry Godberry, George Godberry, Laura Godberry, Noelie Godberry, and Edward F. Le Bourgeois are defendants and appellees, to show cause, if any there be, why the decree rendered against the said Carl Stockmeyer, testamentary executor of Edward F. Stockmeyer, as in said petition for appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 2 day of June, in the year of our Lord one thousand eight hundred and eighty-seven.

DON A. PARDEE, *Judge.*

280 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 11224. Carl Stockmeyer, testamentary executor of E. F. Stockmeyer, *vs.* Charles P. McCan *et als.* Citation. Marshal's return, —.

Citation of appeal waived. Service of petition of appeal accepted. June 2d, 1887.

GEO. GODBERY.

281 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Laura Godberry, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition for appeal and order filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Carl Stockmeyer, testamentary executor of Edward F. Stockmeyer, complainant, is appellant and Mary G. Tobin, individually and as natural tutrix of her minor children, Kate Elizabeth, Fannie Tobin, David Chambers, Hester Margaret, —— McCan, an infant, whose name is not now known to petitioner; Henry Godberry, George Godberry, Laura Godberry, Noelie Godberry, and Edward F. Le Bourgeois are defendants and appellees, to show cause, if any there be, why the decree rendered against the said Carl Stockmeyer, testamentary executor of Edward F. Stockmeyer, as in said petition for appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 2 day of June, in the year of our Lord one thousand eight hundred and eighty-seven.

DON A. PARDEE, *Judge.*

282 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 11224. Carl Stockmeyer, testamentary executor of E. F. Stockmeyer, *vs.* Charles P. McCan *et als.* Citation. Marshal's return, —.

Citation of appeal waived; service of petition accepted.
June 3d, 1887.

LAURE GODBERY.

283 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Noelie Godberry, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition for appeal and order filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Carl Stockmeyer, testamentary executor of Edward F. Stockmeyer, complainant, is appellant and Mary G. Tobin, individually and as natural tutrix of her minor children, Kate Elizabeth, Fannie Tobin, David Chambers, Hester Margaret, —— McCan, an infant, whose name is not now known to petitioner; Henry Godberry, George Godberry, Laura Godberry, Noelie Godberry, and Edward F. Le Bourgeois are defendants and appellees, to show cause, if any there be, why the decree rendered against the said Carl Stockmeyer, testamentary executor of Edward F. Stockmeyer, as in said petition for appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 2 day of June, in the year of our Lord one thousand eight hundred and eighty-seven.

DON A. PARDEE, *Judge.*

284 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 11224. Carl Stockmeyer, testamentary executor of E. F. Stockmeyer, *vs.* Charles P. McCan *et als.* Citation. Marshal's return, —.

Citation of appeal waived; service of petition accepted.
June 2d, '87.

NOELIE GODBERY.

285 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Edward C. Le Bourgeois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition

for appeal and order filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Carl Stockmeyer, testamentary executor of Edward F. Stockmeyer, complainant, is appellant and Mary G. Tobin, individually and as natural tutrix of her minor children, Kate Elizabeth, Fannie Tobin, David Chambers, Hester Margaret, —— McCan, an infant, whose name is not now known to petitioner, Henry Godberry, George Godberry, Laura Godberry, Noelie Godberry, and Edward F. Le Bourgeois are defendants and appellees, to show cause, if any there be, why the decree rendered against the said Carl Stockmeyer, testamentary executor of Edward F. Stockmeyer, as in said petition for appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 2 day of June, in the year of our Lord one thousand eight hundred and eighty-seven.

DON A. PARDEE, *Judge.*

286 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 11224. Carl Stockmeyer, testamentary executor of E. F. Stockmeyer, *vs.* Charles P. McCan *et als.* Citation. Marshal's return, —.

I waive service of citation and of petition of appeal.
June 4th, '87.

E. C. LE BOURGEOIS.

Endorsed on cover: E. Louisiana C. C. U. S. No. 143. Carl Stockmeyer, testamentary executor of Edward F. Stockmeyer, deceased, appellant, *vs.* Mrs. Mary G. Tobin, widow of Charles P. McCan, deceased, individually and as tutrix of the minors Kate Elizabeth, Fannie Tobin, David Chambers, Hester Margaret, and —— McCan; Henry Godberry, *et al.* Filed October 4, 1887.

Office Supreme Court U. S.
FILED.
JAN 9 1891
JAMES H. MCKENNEY,
CLERK.

# SUPREME COURT OF THE UNITED STATES.

*OCTOBER TERM, 1890.*

No. 143.

CARL STOCKMEYER, EXECUTOR OF EDWARD F. STOCKMEYER, DECEASED, APPELLANT,

*versus*

MRS. MARY G. TOBIN, WIDOW OF CHARLES P. McCAN, DECEASED, INDIVIDUALLY AND AS TUTRIX OF THE MINORS KATE ELIZABETH, FANNIE TOBIN, DAVID CHAMBERS, HESTER MARGARET, AND —— McCAN; HENRY GODBERRY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

ALFRED GOLDTHWAITE,
*Solicitor for Appellant.*

T. H. Thomason, Print, 33 Natchez St., N. O.

# SUPREME COURT OF THE UNITED STATES.

*OCTOBER TERM, 1890.*

No. 143.

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CARL STOCKMEYER, EXECUTOR OF EDWARD F. STOCKMEYER, DECEASED, APPELLANT,

*versus*

MRS. MARY G. TOBIN, WIDOW OF CHARLES P. McCAN, DECEASED, INDIVIDUALLY AND AS TUTRIX OF THE MINORS KATE ELIZABETH, FANNIE TOBIN, DAVID CHAMBERS, HESTER MARGARET, AND —— McCAN; HENRY GODBERRY, ET AL.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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PRELIMINARY STATEMENT.

Edward F. Stockmeyer was a subject of the German Empire and resided in the City of New Orleans. He

was the agent of the German Lloyds line of steamships and was engaged in business with his nephew, Carl Stockmeyer, under the firm name of Edward F. Stockmeyer & Co.

On the 7th day of February, 1881, Laura Godberry and Noelie Godberry pledged, by public act before Nicholas B. Trist, a Notary of New Orleans, to Edward F. Stockmeyer, two several promissory notes made by Henry Godberry and George Godberry, their brothers, to their own order and indorsed by them, dated February 20, 1880, each for the sum of eight thousand, seven hundred and fifty dollars, payable one year after date, with interest at the rate of six per cent. per annum, from date until paid, with privilege to makers of extending the said notes from year to year for four years upon payment of interest. The said notes were secured by mortgage and vendor's privilege and lien upon a plantation known as the Angelina Plantation, in the Parish of St. John the Baptist, in the State of Louisiana, and Eastern District (Printed Transcript, pp. 39, 40, 41).

A second pledge of the same two notes was made by the Misses Laura Godberry and Noelie Godberry, by public act before Andrew Hero, Jr., a Notary of the City of New Orleans, on the 25th day of January, 1884, to secure the sum of thirty-two thousand dollars or thereabouts, due to Edward F. Stockmeyer. (Printed Transcript, pp. 41, 42). The interest was paid up to January 25, 1885, and the aforesaid indebtedness

was postponed till January 25th, 1885, by Edward F. Stockmeyer.

Henry and George Godberry were sugar planters and owned and conducted the said Angelina plantation. Edward F. Stockmeyer, individually, had advanced them money to conduct their plantation up to January, 1884.

On the 25th day of January, 1884, in the City of New Orleans, before Andrew Hero, Jr., a notary of said city, a public act was made and signed by Noelie Godberry, Laura Godberry, George Godberry, Henry Godberry, Edward F. Stockmeyer and C. P. McCan, purporting to be a mortgage and crop lien for 1885 upon said Angelina plantation.

The said act of mortgage and crop lien was intended by the said C. P. McCan, the mortgagee, to secure to him the payment of certain notes for the sum of twenty-five thousand dollars made *in solido* by the said George and Henry Godberry to their order, and by them indorsed, divided into sums of five thousand dollars each, payable in New Orleans during December, 1884, and January, 1885, with six per cent. interest from maturity.

It was further intended by said C. P. McCan that the mortgage and crop lien to secure said notes should be a first mortgage upon said plantation. Therefore, it was necessary for Edward F. Stockmeyer and Noelie Godberry and Laura Godberry to sign said act of mortgage and to relinquish their respective rights

under previous and prior acts of mortgage and pledge. The mortgage was for the sum of fifty thousand dollars. (Printed Transcript, pp. 43 to 50 inclusive).

Subsequently and upon a default in the payment of one or more of the notes, Charles P. McCan, as holder and owner of the said notes, proceeded by the executory process in the District Court for the Parish of St. John the Baptist to seize and sell the said plantation. Included in the seizure of the plantation were the sugar house, machinery, engines, boilers, fixtures, apparatus and appurtenances thereof, mules, carts, wagons, aratory implements and all articles of personal property thereto attached or used in the cultivation thereof.

The plantation and everything on it was sold to Charles P. McCan, the mortgagee, on the 7th day of March, 1885, for the price of fifteen thousand dollars cash, and deed for the same was made to him by John Webre, Sheriff of the Parish, on the same day. (Printed Transcript, pp. 50, 51, 52, 53.)

The petition for executory process was filed in the District Court for the Parish of St. John the Baptist on January 15, 1885. Notice of demand and service of copy of petition were waived in writing by H. and G. Godberry on January 19, 1885, though it appears that each was served by a written notice left at his domicile in the Parish. (Printed Transcript, pp. 73 to 85, inclusive).

The writ of seizure and sale was issued by the Clerk of the Court on the 27th day of January, 1885.

The property was advertised in the local paper to be sold at the Court House of the Parish on the 7th day of March, 1885, at 11 o'clock A. M. and was sold on that day, as appears by the return of the Sheriff on the writ, to Charles P. McCan. (Printed Transcript, pp. 93, 94, 95.)

Before the sale George Godberry and Henry Godberry, by their attorney, presented their joint petition to the Court in which the suit was pending, representing that they were the defendants and seized debtors in the executory proceedings, and that the sheriff of the parish had seized certain property under his writ, designating and naming the property, and was proceeding, and would proceed, to sell the said property at public auction on the 7th day of March, 1885, at the door of the Court House of said parish for cash; and further representing that as regards certain property, naming and describing it as animals, utensils, mules, horses, sheep, engines, plows and agricultural implements attached to said plantation, the sale must be made on said plantation, that being the spot where they were taken and seized with said plantation as thereto attached, and that said animals, utensils, etc., could not be sold at the Court House door of said parish, as such a sale would be violative of Article 666 of the Code of Practice, which declares that "animals and utensils attached to

plantations and manufactures, and such articles as cannot be easily removed, must be sold on the spot where they are taken on the day and hour appointed by the sheriff;" and petitioners solemnly protested against said mules, animals, horses, sheep, engines, being sold in block, at the Court House, as advertised, but demanded that said mules, horses, cattle, sheep and engines be separately appraised and separately sold, on the spot where they were taken, that is to say, on the plantation; and assigning as a further reason that the sale on the plantation would result in a larger amount of money in satisfaction of the suit, and in contribution to the payment of the second mortgage on said property in favor of —— Stockmeyer. The petitioners further required, as they had a right to require, under Article 676 of the Code of Practice, that all of the property seized should be appraised separately with such minuteness that they could be sold separately.

Counsel for petitioners made an affidavit to the fact that the office of the Judge of the Twenty-sixth Judicial District Court was then vacant, and that there was no Judge in said District and Parish to act in said judicial office, and that the Judge of the adjoining District, the Twenty-second Judicial District of Louisiana, was authorized to act in that event.

The Judge of the adjoining District, Hon. Henry F. Duffel, upon the presentation of the petition to him, entered an order directing and instructing the Sheriff

of the Parish of St. John the Baptist to sell the property, described in the petition in the order and manner as prayed for, and to be sold separately, and appraised separately, the plantation to be sold first, at the Court House, and the other articles on the plantation. (Pr. Transcript, pp. 89, 90, 91, 92.)

On the day of the sale, a protest was made by the attorneys of Carl Stockmeyer, the curator of Edward F. Stockmeyer, interdict, against the sale of the property without all of said property being duly and separately appraised, according to law, before the said property, or any part thereof, was offered for sale; and further protested against said property being offered for sale and adjudicated in block; and protested that Edward F. Stockmeyer never had waived an appraisement; and protested that Henry and George Godberry could not renounce their right to an appraisement, and could not consent to the forced sale without an appraisement, to the detriment and injury of the vendors' privilege and special mortgage on said property. (Pr. Transcript, pp. 56, 57, 58.) Mr. Andrew Hero, the NOTARY, "advised Mr. McCan to pay no attention to it." He was the mover. (Pr. Transcript, p. 134.) So the sale proceeded.

### Interdiction of Edward F. Stockmeyer.

The petition of Carl Stockmeyer to the Civil District Court of the Parish of Orleans, shows that Edward F. Stockmeyer, his uncle, had been insane for

several months, that he had been an inmate of an asylum for the insane since the 20th of February, 1884.

He asked for the interdiction of his uncle, after due proceedings.

This petition was filed on the 13th day of October, 1884, and proceeded regularly to a judgment, when on the 11th day of November, 1884, Edward F. Stockmeyer was declared hopelessly insane, and was interdicted. (Pr. Transcript, pp. 60 to 64, inclusive).

The history of his case is given by his friends, Frederick Müller, J. F. Schroeder and Adolphe Woeste, and by the Physicans Loeber, Shepard and Smythe.

The malady was melancholia with delusion. It was a marked case, and his physician had him taken to the asylum for the insane at once, when he was called to see him on the 20th of February, 1884.

### The Statement of the Case.

The sale of the plantation took place on the 7th of March, 1885. The case was placed in the hands of an attorney in April, 1885, and the bill of complaint was filed in January, 1886.

The bill was drawn under two aspects, First, on the theory that Edward F. Stockmeyer, at the time that he entered into the business consummated by the act of mortgage and crop lien and pledge of date January 25th, 1884, before A. Hero, Jr., Notary, in the City

of New Orleans, had lost his capacity to attend to business, and to manage his affairs, and that his understanding had become impaired, and that the act was not the expression of a sound, rational mind. In effect that he was weak minded, and that there was no adequate consideration.

The other aspect in which the case is presented to the Court is, that the sale of the plantation and the articles and property enumerated and designated in the advertisement of the Sheriff to Charles P. McCan was irregular, illegal and defective, and is void because the forms of law were not complied with, and against and in violation of the orders of a Judge having the power and authority to make such orders and jurisdiction of the cause.

If the first theory is maintained, then the sale made to Charles P. McCan on the 7th day of March, 1886, by the Sheriff of the Parish of St. John the Baptist must be set aside and the act of January 25, 1884, before A. Hero, Jr., notary, so far as Edward F. Stockmeyer is cencerned must be cancelled and the pledge as granted by Laura Godberry and Noelie Godberry to Edward F. Stockmeyer by act dated February 7, 1881, and renewed by act of January 25, 1884, must be fully recognized and established, and said property in said pledges described, be adjudged and decreed to be sold according to law to satisfy said pledges.

If, on the other hand, the incapacity of said Edward F. Stockmeyer at the date, 25th day of January, 1884,

has not been established and no sufficient evidence of weakness of mind and inadequacy of consideration proved to invalidate the said act of January 25, 1884, before A. Hero, Jr., notary, as concerns Edward F. Stockmeyer, but that the proceedings by executory process and the sale thereunder by the Sheriff of the Parish of St. John the Baptist were irregular, illegal and void, then the Sheriff's deed must be set aside and the said Charles P. McCan must be treated as a trustee and be made to account to this Honorable Court as a trustee for rents and monies he has received.

All parties who were supposed to have any interest were made defendants.

The defendant, Charles P. McCan, made a full answer setting forth the execution of the acts of pledge and mortgage and the intervention of the Misses Godberry and Edward F. Stockmeyer in the act of mortgage, privilege and pledge made before Andrew Hero, Jr., notary, on the 25th day of January, 1884, granting priority and preference of payment to said Charles P. McCan over Edward F. Stockmeyer and the Misses Noelie and Laura Godberry, and denied that he, Charles P. McCan, had any knowledge of the insanity of Edward F. Stockmeyer or that his mind was impaired.

In his answer he maintains the validity of the sale to him.

After a replication was filed the case was argued and

submitted upon the evidence and a decree was entered for the defendant, dismissing the bill.

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ARGUMENT.

We submit that the case has two aspects: 1st. That at the time Edward F. Stockmeyer entered into the agreement with Charles P. McCan on the 25th day of January, 1884, before Andrew Hero, Jr., the notary, he (Stockmeyer) was in a condition of great mental weakness, and that there was gross inadequacy of consideration for the mortgage, and that from these circumstances, imposition or undue influence ought to be inferred.

2d. That the sale by the Sheriff under the proceedings for executory process were manifestly irregular and illegal, and ought to render it null and cause it to be set aside.

We will take them in their order.

In the case of Allore vs. Jewell, reported in the 94 U. S. at p. 98, this Court said: "And it may be stated as settled law, that wherever there is a great weakness of mind in a person executing a conveyance of land, arising from age, sickness, or any other cause, though not amounting to absolute disqualification, and the consideration given for the property is grossly inadequate, a court of equity will, upon proper and seasonable application of the injured party, or his representatives, or heirs, interfere and set the conveyance aside." In that case six years had

elapsed before the bill was filed. In that case there was a consideration, though small.

In this case there was no consideration to Edward F. Stockmeyer, though it does appear that the interest amounting to $1050 was paid to Edward F. Stockmeyer & Co. upon two notes of $7,500 each, held in pledge by Edward F. Stockmeyer. No evidence appears on the record that Edward F. Stockmeyer ever received one cent of it.

In the case of Kempson vs. Asbee, reported in 10 Chancery Appeals, Eng. Law Reports, at p. 15, the Court set aside a security given by a young lady to secure the payment of a judgment against her stepfather, on the ground of pressure and the lack of independent advice.

The enforcement of the security would have bankrupted the young lady.

In the present case, Mr. Huntington, the attorney of Edward F. Stockmeyer, advised against doing the thing. What induced Stockmeyer to intervene in the act? What promise was made, what representations were made, will never be known. With a debt due to him by George and Henry Godberry, amounting to $32,000, with a pledge in his hands of two notes secured by mortgage and vendors' lien, amounting to $15,000, and a further pledge of the same two notes for the whole sum of $32,000, why should he abdicate his place of priority and preference to another creditor, a new creditor, to the extent of $25,000 in

notes and a general mortgagee to the extent of $50,000? The answer is found in the facts subsequently developed. His insanity, his obliquity of mind and reason. His relation to the Godberry brothers had been kindly. He was nervous, excitable and sensitive, easy to be imposed upon, and suffering from a horrible delusion.

In the case of Harding vs. Handy, 11 Wheaton, at p. 125, C. J. Maashall says: "If these deeds were obtained by the exercise of undue influence over a man whose mind had ceased to be the safe guide of his actions, it is against conscience for him who has obtained them to derive any advantage from them. It is the peculiar province of a Court of conscience to set them aside. That a court of equity will interfere in such a case, is among its best settled principles."

In the case of Clarkson vs. Hanway, reported in 2 Peere Williams' reports at p. 206, the Master of the Rolls said: "All this is fraud apparent; and judging upon the face of the deed is judging upon evidence which cannot err, whereas the testimony of witnesses may be false." Read the Mortgage Act in this case, signed on the 25th of February, 1884, and then read the proceedings and history of the proceedings for executory process, and say if it is not true what the Master of the Rolls said more than 170 years ago: "All this is fraud apparent; and judging upon the face of a deed is judging upon evidence which cannot err; whereas the testimony of witnesses may be false."

Judge Story, in the case of Harding vs. Wheaton, reported in 2 Mason, at p. 386, says, "extreme weakness will raise an almost necessary presumption of imposition, even when it stops short of legal incapacity; and though a contract, in the ordinary course of things, reasonably made with such a person might be admitted to stand, yet if it should appear to be of such a nature as that such a person could not be capable of measuring its extent or importance, its reasonableness or its value, fully and fairly, it cannot be, that the law is at so much variance with common sense as to uphold it." In the case of Hall vs. Perkins, 3 Wendell at page 631, Chief Justice Savage said:

"Fraud is sometimes also apparent from the intrinsic nature of the contract. It may be such as no man in his senses, and not under a delusion, would make, and such as no honest and fair man would accept, which is Lord Hardwicke's second class of frauds; and his third is which may be presumed from the circumstances and condition of the parties contracting."

Who can say that any man, other than one like Stockmeyer, under a delusion, and not in his senses, would ever have intervened in the act of January 25th, 1884, and surrendered his priority and preference to McCan? Other commission merchants had all refused to advance money to the Godberrys. Have we not a right in equity to presume that no "honest and fair man would accept" such a bargain? The circumstances of the making the act, and the

terms written into the act show an unconscionable advantage over Stockmeyer; and the circumstances of, and surrounding, the sale emphasize the fraudulent purpose to acquire the plantation at a grossly inadequate price.

The Court will observe that no money was paid when the Act was made on the 25th of February, 1884. The money was to be advanced. By the 20th of February, in less than four weeks, Stockmeyer was hopelessly insane.

At page 67 of the printed record in the deposition of Carl Stockmeyer, the question was asked.

Do you know anything about his dealings with Charles P. McCan and the Godberrys, of your own knowledge?

Ans. No, sir; I know very little about them. He conducted them all himself.

Question. Did he speak to you with reference to them?

Ans. Not about particulars. He only told me that our mortgage had to go behind the McCan mortgage. We could not help ourselves otherwise. And even at that, it would be better than to let the plantation run waste; but the transaction of McCan coming in with $25,000 would keep the plantation up, and keep our mortgage in a somewhat better condition than when the plantation would run waste.

Question. Was it his money which had been advanced to the Godberrys?

Ans. Yes, sir.

Question. Did the firm of Edward F. Stockmeyer & Co. have anything to do with this pledge?

Ans. I don't know whether the pledge was made in the name of the firm or in his own individual name.

Question. It was made in his own individnal name?

Ans. Well, then, the firm had nothing to do with it.

The recollection of his attorney, who had known him for twenty-five years, was that he had advised him against it. However it may have been, Stockmeyer was in that deplorable condition and suffering from a malady described by Dr. A. W. Smythe on p. 21, Printed Record:

"I think it destroys the judgment and causes erroneous action. It is not simply a weak or childish, but an erroneous and wrong judgment."

The mind quits the consideration of the facts and circumstances connected with the making and enforcement of the act of January 25th, 1884, with the conviction that it was improvidently made by both McCan and the Godberrys, and the Notary, too, with Stockmeyer; that there was not equality between their minds; and that there was pressure. How much and of what character we have not been able to develop to the Court.

Upon that branch or aspect of the case, we will not make further comment.

II.

The second aspect of the case is that the sale of the

plantation and the articles and property enumerated and described in the advertisment of the sheriff, to Charles P. McCan, was irregular, illegal and defective, and is void because the forms of law were not complied with; and against, and in violation of the orders of a Judge having the power and authority to make such orders and with jurisdiction of the cause.

On the 4th day of March, 1885, counsel for George Godberry and Henry Godberry filed a protest and petition in said case, pending in the District Court of the Parish of John the Baptist, against the sale of the animals, mules, horses, sheep, engines, plows and agricultural implements, elsewhere than on the said plantation, and that such a sale elsewhere than on on the plantation, would be violative of Article 666 of the Code of Practice, and that a sale in block of the said plantation, and of the animals, utensils, mules, horses, sheep, engines, plows and agricultural implements, enumerated and described in the Sheriff's advertisement, as directed by the writ, would seriously and materially injure the petitioners, whereas a sale as thereinafter suggested would produce a large amount of money in satisfaction of said writ and in contribution to the payment of the second mortgage on said property in favor of ——— Stockmeyer. The necessary affidavit of counsel, that the office of the Judge of the Twenty-Sixth Judicial District Court of Louisiana was then vacant, and that there was then no Judge in said District and in the Parish of St. John the Bap-

tist to act in said judicial office, and that the Judge of the adjoining District, the Twenty-Second Judicial District of Louisiana, was authorized to act in that event, was made.

The following order was then made on the said 4th day of March, 1885:

Upon reading the foregoing petition and considering Articles 666 and 676 of the Code of Practice, let the Sheriff of the Parish of St. John the Baptist be, and he is hereby directed and instructed to sell the property described in the foregoing petition in the order and manner set forth therein, and let the same be sold separately, and appraised separately, as above set forth and prayed in said petition, the plantation to be sold first at the court-house door, and the other articles on the plantation as prayed for.

At Chambers, March 4, 1885.

(Signed) HENRY W. DUFFEL, Judge.

A copy of the petition and order was filed in the Clerk's office in the Parish of St. John the Baptist. (Pr. Transcript, pp. 53, 54, 55 and 56.)

A protest was filed in the said Court, in the Parish of St. John the Baptist, by counsel for Carl Stockmeyer, Curator of Edward F. Stockmeyer, interdict, on the 6th day of March, 1885. (Pr. Transcript, pp. 56, 57 and 58.)

Under the Louisiana law, Code of Practice, 1870, Art. 745, "When the Sheriff sells property which he has seized conformably to the provisions contained in

this chapter (relating to Executory Process), he must cause the same appraisements to be made, and observe the same formalities as are prescribed for the sale of property seized in execution."

Under the articles of the Code of Practice governing the sale and adjudication of property seized under the writ of *Fieri Facias* by Article 666 of the Code of Practice, 1870: "Animals and utensils attached to plantations and manufactures and such articles as cannot be easily removed, must be sold on the spot where they are taken, on the day and hour appointed for this purpose by the Sheriff."

Our contention is that the mortgage act of the 25th of January, 1884, before Andrew Hero, Jr., notary, in the City of New Orleans, contained several obligations.

Under Article 2078, Revised Civil Code, "several obligations are produced, when what is promised by one of the obligors is not promised by the other, but each one promises separately for himself to do a distinct act; such obligations, although they may be contained in the same contract, are considered as much individual and distinct as if they had been in different contracts and made at different times."

Stockmeyer intervened in the act of mortgage and subordinated his claims and demands to the claim McCan might have for and on account of advances in money and supplies that McCan might make and furnish during the year 1884, and that in case of any

sale of the plantation and appurtenances under any judicial proceedings or otherwise, the amount that might be due McCan should be paid in preference and without regard to the claims or indebtedness due him (Stockmeyer).

The Godberrys could not, by their agreement with McCan, waive the appraisement so as to affect Stockmeyer or the vendor's mortgage and privilege securing the notes, which had been pledged to Stockmeyer.

Article 11 of the Revised Civil Code: "Individuals cannot by their conventions derogate from the force of laws made for the preservation of public order or good morals. But, in all cases in which it is not expressly or impliedly prohibited, they can renounce what the law has established in their favor, when the renunciation does not affect the rights of others and is not contrary to the public good."

Paragraph II of Section III of chapter VII, Part II of the Revised Code of Practice, treats of judicial sales under writs of *fieri facias* in Articles 663 *et seq.* to 704, appraisement is provided for.

In the case of Levick, Barrett & Kuen vs. Andrew J. Walker, 15 An. p. 245, C. J. Merrick said: "We think thestipulation in a contract, that the property of thedebtor shall be sold without appraisement in the event of non-payment at maturity one of those facts which ought not to be recognized by our courts in the decrees rendered upon such contract. The law has,

by express provisions, ordained the mode in which its own officers shall enforce the judgments of the courts.

"Parties regulate their own conduct by their stipulations, but they cannot prescribe rules of proceeding for public officers, nor demand that the courts of justice shall depart from the usual modes of enforcing their decrees. If, before judgment, the creditor may stipulate the manner in which the same shall be executed, the principle will sanction an endless variety of modes of execution of judgments, and indeed the parties may waive all formalities and all delay, and may even consent that some other person than the Sheriff shall sell the property of the debtor and execute the decree of the Court, and if a decree giving effect to such contract be legal, then also the sale under it would be legal, and other creditors might find themselves deprived of their common pledge without notice. In view of our complicated system of mortgages and privileges, and the restrictions upon sales when parties are in insolvent circumstances as well as the responsibility imposed by our law upon the Sheriff and his sureties, we are of the opinion that such stipulations ought not to be enforced.

"If they be not immoral, they may be considered as affecting the rights of others and void."

The case of Broadwell vs. Rodriguez, 18 An. 68, it is true, does decide that the appraisement may be waived, but the rights of creditors did not arise in that case.

Moreover, in our case, in the writ which issued to the Sheriff to seize and sell, and found at p. 93 of the Printed Transcript, the Sheriff was commanded to seize, and, after the legal delays, to advertise and sell, *according to law*, the following described property, etc.

He was not directed to sell *without appraisement* by the writ which came to him. It made no difference what the prayer in the petition had asked for. He could look only to his writ and to the Statute. He had no power to change the writ. He could find *no law* which authorized him to sell the property seized without having it appraised.

In the case of Union Bank vs. Bradford, 2 An. 416, the Bank held a mortgage containing a waiver of appraisement. In the petition for executory process the Bank prayed for an order of seizure and sale, as the law directs. Upon this petition, the Judge made the following decree: "It is ordered that an order of seizure and sale issue as prayed for."

In the writ, which was issued by the Clerk upon this order, the Sheriff was directed to seize and sell for cash, *without the benefit of appraisement*, the following property, etc.

The Sheriff did as his writ commanded him to do, but the sale was set aside, because the writ was not in conformity with the order of the Judge.

In our case, the decree of the Judge was, "Let executory process issued as prayed for, and according to

law." But the writ did not conform to the order. Nor did the Sheriff obey the direction, of the writ, and sell *according to law*. No order to sell without appraisement was ever given to the Sheriff through the Clerk. He must have gotten his instructions elsewhere.

By Article 666 of the Code of Practice: "Animals and utensils attached to plantations and manufactures, and such articles as cannot be easily removed, must be sold on the spot where they are taken, on the day and hour appointed for this purpose by the sheriff."

Article 665 of the Code of Practice, provides, that "in the country, the sale may be made on the plantations which are to be sold, if the debtor require it; but in this case, notice must be given of the fact in the advertisement of sale."

In the case of Zacharie vs. Winter, 17 Louisiana Reports, 76, the sale was made on the plantation, not only without the consent, but contrary to the will of the debtor. The sale was adjudged a nullity. See also Lawrence Syndic vs. Bowman et al., 6 Robinson, 21; Wederstrandt vs. Marsh, 11 Rob. 533.

"No forced alienation is valid, and divests the title of the defendant in execution, unless the forms of law have been complied with. It is true that he who exhibits a judgment, execution and sheriff's deed, makes out a *prima facie* title; but if the regularity of the proceedings be contested, and it be shown that the

forms of law were not complied with, the purchaser acquired no title, and could confer none upon his vendee." Lawrence, Syndic, vs. Young, 1 Louisiana An. 297.

Respectfully submitted,

ALFRED GOLDTHWAITE,

*Solicitor for Appellant.*

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ASSIGNMENT OF ERRORS.

1. The Circuit Cout erred in not declaring the sale made by John Webre, Sheriff, per J. Voisin, Chief Deputy, to Charles P. McCan, dated March 7th, 1885, null and void.

2. The Circuit Court erred in not setting aside the sale made by the Sheriff of the Parish of St. John the Baptist to Charles P. McCan, on the 7th day of March, 1885.

3. The Circuit Court erred in not decreeing that the proceedings by the Sheriff of the Parish of St. John the Baptist under the writ of seizure and sale issued to him by the Clerk of the District Court for the Parish of St. John the Baptist, were irregular, illegal and void.

ALFRED GOLDTHWAITE,

*Solicitor for Appellant.*

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 143.

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*versus*

MRS. MARY J. TOBIN, ET ALS., APPELLEES.

BRIEF IN BEHALF OF APPELLEES.

J. D. ROUSE,
WM. GRANT,
*Attorneys for Appellees.*

L. GRAHAM & SON, PP. 121, 123 Chestnut St., N. O.

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*Solicitor for Appellant.*

FILED,
JAN 8 1891
JAMES H. McKENNEY,
CLERK

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## STATEMENT.

On the 20th day of February, 1880, Henry and George Godberry purchased from their mother the Angelina plantation in St. James parish, La., for the price of $35,000, in payment of which they gave their four notes for $8750 each, secured by vendor's lien and mortgage. R., p. 35, Exhibit A.

They took possession and cultivated the plantation during the year 1880, with the assistance of Edward F. Stockmeyer, who made large advances to them in money and supplies. But the year's operations were not prosperous, and after the sale of the crop of sugar raised, there remained an indebtedness to Stockmeyer of $3728.52.

Their two sisters, Laura and Neoli Godberry, who owned two of the above-mentioned notes (the other two having been paid) then came to their assistance, and in order to secure this

indebtedness, and to procure a further credit of $7500 for their brothers, pledged the two notes to Stockmeyer. R., p. 39, Exhibit B.

The Godberry brothers continued their planting operations for the next three years, probably at a loss, for on the 25th of January, 1884, they were indebted to Edward F. Stockmeyer in the sum of $32,000. To secure this large amount their sisters again pledged the two notes to Stockmeyer. R., p. 41, Exhibit C.

Stockmeyer, being unable to carry the plantation any longer, suggested, some time in December, 1883, to the Godberry brothers that they procure supplies elsewhere.

He took them to Charles P. McCan, the deceased defendant in this case, with whom negotiations were entered into for that purpose.

This was about the last of December, or the beginning of January, 1884, the season when planters usually arrange for their annual supplies. McCan insisted on being secured for his advances by a first mortgage on the plantation, with priority over Stockmeyer and the notes owned by the Misses Godberry.

Negotiations were considerably protracted, but finally, on the 25th of January, McCan's terms having been agreed to by all parties, he consented to make advances for the year to the amount of $25,000. The mortgage at page 43 of the record marked Exhibit D was thereupon executed by the Godberry brothers.

Stockmeyer as pledgee, and Laura and Neoli Godberry as owners of the two mortgage notes for $8750 each, made themselves parties to the act, and stipulated that their claims should be subordinate and inferior in rank to the claims of McCan for the advances he had agreed to make.

After this large sum of $25,000 had been expended, as early as September, 1884, still further advances became necessary for the purpose of taking off the crop. It was then agreed by Stockmeyer, and all parties in interest, that McCan should advance the further sums required, and that these should be first paid out of the proceeds of the crop. R., p. 129, Exhibit M.

The operations of the year were disastrous the advances

amounting to $29,027.46, and the proceeds of the crop to only $8320.07, leaving a deficit of $20,707.39. R., p. 135, McCan No. 3.

This deficit not being paid, suit for foreclosure of the mortgage was brought by McCan in the District Court for the Parish of St. John the Baptist, and the plantation was sold by the sheriff on the 7th of March, 1885, McCan becoming the purchaser at the price of $15,000. R., pp. 73 and 94.

The foreclosure proceedings, based on the mortgage, were in the form of executory process, *i. e.*, an order of sale based on the confession of judgment contained in the act, according to the procedure established by the law of Louisiana. The sale was made in block at the court house of the parish without appraisement, the parties having consented to this in the act of mortgage.

After the order of sale had been granted, and three days prior to the advertised date of sale, George and Henry Godberry presented an *ex parte* petition to the judge of the adjoining district, alleging that they had demanded that the movable property *on the plantation* be sold on the plantation, under a separate appraisement. The judge so ordered, but the sheriff offered the land and movables for sale at the seat of justice, as he had advertised. The curator of Stockmeyer, though not a party to the suit, made a like demand on the sheriff, and protested against the sale taking place as advertised, but he obtained no order from the judge. The curator at this time did not claim that the mortgage was void because of the supposed insanity of Edward F. Stockmeyer.

## ARGUMENT.

The bill of complaint avers as a ground for annulling the mortgage granted to secure the advance made by McCan, and depriving him of the benefit of the foreclosure: 1. That the mortgage does not in terms, subordinate the pledge of Edward F. Stockmeyer to the notes held by McCan. 2. That there was no consideration given to Stockmeyer for the agreement subordinating his rights to those of McCan. 3. That at the time the McCan mortgage was executed, on the 25th day of

January 1884, Stockmeyer "*was losing and to a great extent had lost his capacity to attend to business and manage his affairs; that his mind was seriously impaired so as to affect his understanding and judgment and so continued until the month of November, 1884, when he was judicially interdicted, but that previously thereto, February 20, 1884, he was placed in an asylum.*"

Other allegations are made affecting the validity of the sale under the foreclosure proceedings, which are immaterial unless the court sustains one or all of these three grounds of attack on the validity of the mortgage.

We will discuss these grounds in the order above stated.

I.

As to the first, that Stockmeyer did not in terms stipulate in the mortgage of January 25, 1884, and agree that his claims should be subordinate to the rights of McCan, it is difficult to understand upon what this averment is based. The mortgage itself clearly shows that McCan was to advance $25,000 for the purpose of enabling the Godberry brothers to cultivate their plantation for the year 1884. To this instrument, Edward F. Stockmeyer, pledgee, and the Misses Godberry, as owners of the two notes for $15,000, became parties, and, after stating that they had read the mortgage, declared "that the said notes, and "the mortgage and privilege securing their payment, shall be "subordinate and inferior in rank to the mortgage and notes "herein made, as well as to all claims and demands of said "McCan." Language, it seems to us, can not be more explicit. But if there can be anything ambiguous in the clause, the intent of the parties is perfectly clear. This is to be gathered, as the Supreme Court of Louisiana has said, from the whole instrument, and the circumstance to which it points.

*Peck vs. Bemis*, 10 La. An. 160.

Considering the fact that McCan would not make the advances unless he was given a first mortgage, and that its execution took place some two weeks after negotiations to that effect had begun, the real intent of the parties coincides with the language they used.

II.

The second ground is equally untenable. Stockmeyer, to the extent that he relinquished the security he held on the plantation in favor of McCan, became a surety for the Godberry brothers.

In Louisiana under the civil law a consideration is not necessary to support the contract of suretyship, as between the s rety and the creditor.

A debt due by another is a sufficient consideration.

*Flood vs. Thomas*, 5 Martin La. R. N. S. 560.

This is the general rule of law.

*Pennsylvania Coal Company vs. Blake*, 85 N. Y. 226.

*DeWolfe vs. Rabaud et als.*, 1 Peters 476.

III.

The third ground contains the real issue in this case.

Under the Civil Code of Louisiana the contract of an insane person is not *per se* void, and it is voidable only under certain circumstances.

C. C., Art. 1782: "All persons have the capacity to contract " except those whose incapacity is specially declared by law. " These are persons of insane mind, those who are interdicted, " minors and married women."

C. C., Art. 1783: "All cases of incapacity are subject to the " following modifications and exceptions."

C. C., Art. 1784: "Persons *interdicted* can, in no case what- " ever, make a valid contract after the petition has been pre- " sented for their interdiction until it be legally removed."

C. C., Art. 1788: "The contract entered into by a person of " insane mind is void * * for want of consent. It is not " the judgment of interdiction that creates the incapacity, it is " evidence only of its existence, * * and from these princi- " ples result the following rules. 1. After the interdiction " no other evidence than the interdiction itself is necessary to " prove the incapacity of the person, and to invalidate any con- " tract he may have made after the day the petition for inter- " diction was presented * * * 2. As to contracts made " prior to the application for interdiction they can be invalida- " ted by proving the incapacity to have existed at the time the

"contract was made. 3. But in order to prevent imposition "it is not enough to make the proof mentioned in the last rule; "it must also, in that case, be shown that the person inter- "dicted was known by those who generally saw and con- "versed with him to be in a state of mental derangement, "or that the person who contracted with him, from that or "other circumstances, was acquainted with his incapacity. "4. That except in the case of death, hereafter provided for, "no suit can be brought * * * to invalidate a contract on "account of insanity, unless judgment of interdiction be pro- "nounced before bringing suit, etc. * * * 5. If the party "die within thirty days after making the contract, the insanity "may be shown by evidence without having applied for the in- "terdiction; but if more than that time elapse, the insanity "can not be shown to invalidate the contract unless the in- "terdiction shall have been applied for, except in the case "provided for in the following rule: 6. That if any instrument "or other act of a person deceased contain in itself evidence "of insanity in the party, then it shall be declared void, "although more than thirty days have elapsed between the "time of making the act and the death of the party, and though "no petition shall have been presented for his interdiction. "7. In the case mentioned in the preceding rule other proofs "of insanity may be offered, etc. 8. That where insanity is "alleged to avoid a donation or other gratuitous contract it "is not necessary to show that the insanity was generally known; "it will be sufficient to show that it existed; and if the party "be dead without having been interdicted, it is not necessary "to show that interdiction had been applied for."

C. C., Art. 401: "All acts done by a person interdicted from the date of the filing of the petition until the day when the same is pronounced are null."

C. C., Art. 402: "No act anterior to the petition for inter- "diction shall be annulled, except when it shall be proved that "the cause of such interdiction notoriously existed at the time "when the acts, the validity of which is contested, were made "or done, or that the party who contracted with the interdicted "person could not have been deceived as to the situation of "his mind. *Notoriously* in this article means that the cause

"of the interdiction was generally known by the persons who "saw and conversed with the party."

C. C., Art. 403: "After the death of a person, the validity "of acts done by him can not be contested for cause of insan- "ity, unless his interdiction was pronounced or petitioned for "previous to the death of such person, except where the mental "alienation manifested itself within ten days previous to the "decease, or in which the proof of want of reason results from "the act itself which is contested."

In substance, these rules require proof in all cases where insanity is pleaded as a ground for the avoidance of a contract based on a valid consideration, that the party whose agreement is sought to be avoided was, at the time of its execution, known to be insane by the other party to the instrument, or that such insanity was so notorious that it must be presumed to have been known.

In this case the bill avers that at the time he executed the mortgage act of January 25, 1884, Stockmeyer "was losing "and to a great extent had lost his capacity to attend to busi- "ness, and that his mind was so seriously impaired as to affect "his understanding and judgment." That this state of mind continued until about the 11th day of November, 1884, when he was judicially interdicted, although on the 20th day of February previous thereto he had been placed in an asylum.

These are the only averments found in the bill touching the insanity of Stockmeyer, or affecting in any way the validity of his acts now sought to be annulled. There is no averment in direct terms that he was insane on the 25th day of January. 1884, when he executed the mortgage, nor that the then state of his mind, such as it was, was notorious, nor that it was actually known to McCan, and there is an entire absence of any suggestion that McCan imposed upon or defrauded him in any manner whatever.

To avoid a contract for insanity it is well settled, at least in Louisiana, that the mental derangement of the party executing it must have been actually known by the party who claims the benefit of it, or it must have been so notorious that it could not possibly have been unknown to him.

*La. Bank vs. Dubruil*, 5 M., O. S. 417.

*Succession of Smith*, 12 La. An. 24.

Says the Court in *Bumgarden vs. Langles*, 35 An. 441: "A "person may be mentally and physically weakened by disease "without being legally incapacitated to contract." It is true that the court will scrutinize contracts made by persons of weak or impaired intellect, and protect them from undue influence, improper advantage and fraud. But this is not made a ground of complaint in the present case, nor do the facts suggest that McCan exerted any influence whatever on the mind of Stockmeyer by which he was induced to give him a preference for the advances made to the Godberry brothers.

It must be remembered that Stockmeyer, who had advanced money to the Godberry brothers for three years, found himself a creditor to the amount of some $30,000 at the beginning of January, 1884. For this he held a general mortgage on the Angelina plantation, and a special pledge of two vendor's notes for $8750 each secured on the same property. He was unable or unwilling to make further advances.

*Henry Godberry*, a witness called by the complainant, and who was a party to the whole transaction, says in his testimony, that Stockmeyer told him he had no money to run the plantation, and that if McCan would run it for the coming year he would be satisfied; that Stockmeyer thereupon went to McCan several times, and made the negotiations which resulted in the execution of the act of mortgage. He says that Stockmeyer knew that McCan would not make the advances unless he was given a prior mortgage. These negotiations began about the last of December, and were completed January 25, 1884, when the mortgage was executed. R., p. 27, *et seq.*

*Carl Stockmeyer*, the partner of Edward, says that Edward was 51 years old; a man of cold temperament, and generally of an unsociable disposition. Early in January he appeared to be laboring under some undue excitement, and confided his troubles to the witness and a friend, Mr. Schroeder. He spoke of the Godberry matter, and said his mortgage must go behind the McCan mortgage; that it could not be helped, and even at that, it would be better than to let the plantation go to waste; that the McCan transaction would put his mortgage in a better condition than to let the plantation go to waste.

The undue excitement consisted in his saying that he had

committed a fraud, and would be brought to the penitentiary. Notwithstanding this, he continued in his office, with the knowledge of his partner, transacting business until February 20, when Dr. Loeber was called in, and he was sent to the asylum. R., p. 64, *et seq.*

*George Godberry* says he and his brother applied unsuccessfully to six different persons and firms for advances before they went to McCan. He was present when the mortgage was signed, and noticed nothing peculiar about Stockmeyer, except that he appeared nervous and restless. R., p. 68, *et seq.*

*Frederick Müller* says he observed a change in Stockmeyer about six weeks before he was put in the asylum. He was nervous, would walk fast, and about three weeks before he was brought to the asylum, if addressed, would want to run away. He also appeared downcast and oppressed. Witness first noticed his conduct as indicating insanity *eight* days before he was put in the asylum, although he met him every day. R., p. 100, *et seq.*

*J. F. Schroeder*, who had lived with Stockmeyer since 1864 on the most intimate terms, says he was always peculiar. As an illustration of this, he says Stockmeyer would generally pass on the streets, without knowing him, unless he stopped him. He noticed no change in him until a short time before he was sent to the asylum. He was depressed in spirits for about three weeks prior to that event. He said he was not sick, that he had advanced to some plantation more than he could afford. He was decidedly over-excited a week before he went to the asylum. And nothing was done until a meeting of his friends was called two or three days prior to February 20, 1884. He was always a reticent man, and of a queer disposition. For this reason strangers who transacted business with him did not become intimate. Witness loaned him some money about the last of January, but he did not then think him insane. R., p. 103.

*Dr. Edward T. Shepherd*, who was in charge of the asylum where Stockmeyer was confined, saw him first on the 20th of February, the day he was admitted; says his impression then was that he had been insane three or four days, but that he had not been in perfect mental health for six months. R., p. 109, *et. seq.*

*Dr. F. Loeber*, who had been Stockmeyer's physician for years, states that he examined him at the request of Mr. Schroeder a day or two before he was sent to the asylum, and found him insane.

He had seen him a week or two before that, and he then appeared unusually quiet, but noticed nothing else unusual about him. He was always a peculiar man—a very strange man. R. p. 117, *et seq.*

*Dr. A. W. Smythe* first saw Stockmeyer several months after he was sent to the asylum, and found him suffering from acute melancholia, which runs a rapid course. R., p. 120.

*Rodolphe Woeste*, who had been intimate with Stockmeyer since 1854, says he only noticed that he was out of his mind a few days before he was sent to the asylum. There was nothing strange about him prior to then. R., p. 124, *et seq.*

*Ew. Huntington*, who was Stockmeyer's counsel, says he consulted him about the McCan transaction, and that he advised him against it. He noticed a change in him, but could not say whether he was insane. R., p. 126.

*Andrew Hero*, who drew the act of mortgage, and before whom it was executed, says Stockmeyer had the whole matter explained and that he understood that his claims were to be subordinated to those of McCan, the consideration being that McCan would pay interest on his debt and give the Godberry brothers a chance to work themselves out of debt. R., p. 130.

We may safely assert from all this evidence, that Stockmeyer, so far as his most intimate friends could judge, was perfectly sane and in the possession of his mental faculties until about one week prior to his confinement in the asylum. Whether the cause which ultimately dethroned his reason had existed for any great length of time is immaterial, for legal insanity such as vitiates a contract dates from the time when the fact becomes notorious, and generally known to those who converse with the insane person. McCan being dead, it may be presumed that he was not even as well informed as to the state of Stockmeyer's mind as the persons who have testified, most of whom were intimate personal friends.

Does the instrument itself contain evidence of insanity on the part of Stockmeyer? It certainly does not, unless the fact of

pledging one's property for the debt of another is, *per se*, evidence of that fact. But this can not be admitted as a principle of law, without destroying our whole system of suretyship, which we do not think the courts are prepared to sanction.

IV.

It has been suggested that this case is governed by the eighth rule, prescribed by Art. 1788 of the Code, which provides "that where insanity is alleged to avoid a donation or other "gratuitous contract, it is not necessary to show that the incapacity was generally known; it will be sufficient to show "that it existed if the party be dead," etc.

But we have shown that the contract of suretyship is an onerous one, based on a real consideration. If, however, this particular agreement be treated as an independent contract to pay the debt of another, it requires no further or other consideration than the original debt. This is the *pact constitutæ pecuniæ* of the civil law.

*New Orleans & Carrollton R. R. Co. vs. Chapman*, 8 An. 97.

If a consideration, however, is necessary in such a case, it is in proof that McCan, prior to the execution of the mortgage, agreed to pay the interest due Stockmeyer by the Godberry brothers as part of the inducement for him to relinquish his prior claims. That this interest, to the amount of $1050, was actually paid by McCan on the 29th day of January, 1884, is testified to by complainant. (See R., p. 99.)

But the proof utterly fails to show that Stockmeyer was insane in fact when the mortgage was executed, and for this reason it is insufficient to annul even a purely gratuitous contract.

This disposes of the case so far as the alleged insanity of Stockmeyer is concerned.

V.

The defendant's title to the property acquired under the foreclosure proceedings is also attacked on various grounds. It is alleged: 1. That the sheriff refused to obey an order made by Judge Duffel, directing him to sell the land first, at the court

house, and the other articles on the plantation. 2. That complainant protested against the sale being made in block, without being separately appraised.

Tested by the law regulating judicial sales in Louisiana the order made by Judge Duffel was clearly erroneous, and the course followed by the sheriff entirely correct.

Article 645, of the Code of Practice, prohibits the sheriff from seizing the agricultural implements, cattle, fodder, etc., separately from the plantation. Article 664 directs the sale to be made generally at the seat of justice of the parish; Article 665, permits sales to be made in the country on the plantation, if the debtor requires it; but notice of the fact must be contained in the advertisement, and by the act of the Legislature No. 25 of 1876, p. 50, the debtor must claim this right within three days after seizure.

Says the Supreme Court, in Walker vs. Villavaso, 26 An. 42: "A defendant can not require movables attached to a plantation to be sold on the plantation. Both the movables and the real estate must be sold at the same place, *i. e.*, the seat of justice."

The law does not intend that articles attached to a plantation subject to the mortgage shall be sold in one place and the lands in another. Ibid.

The debtor may require the whole to be sold on the plantation, if he demands it within three days after the seizure.

This limitation was placed upon the exercise of that right by the Act of 1876 to prevent its abuse, as prior thereto a debtor who wished to prevent a sale would demand at the last moment that it take place on the plantation. Its necessity is shown by the conduct of the parties in the present case. They remained quiet until three days prior to the sale as advertised to take place, and then demanded that the movables attached to the plantation be sold on the place, and that the lands be sold at the seat of justice. Compliance with this unreasonable request would have vitiated the sale.

Nor do we think the fact that the debtors in this case procured an *ex parte* order from a judge in the adjoining judicial district, directing the sheriff to violate the law in this respect, aids their pretensions. This order was based on the petition of

George and Henry Godberry, addressed to the judge of the Twenty-sixth Judicial District Court for the parish of St. John the Baptist, in which parish the plantation was situated. No citation was prayed, nor issued against McCan or the sheriff. Upon an averment that the office of judge of the Twenty-sixth Judicial District Court was vacant, the petition was presented to Judge Duffel of the Twenty-second Judicial District, and by him granted. R., p. 53, *et seq.*

Edward F. Stockmeyer, by his curator, served a like notice and protest against the sale, but did not then claim that the mortgage of McCan was affected by his insanity. R., p. 56.

No order of court was obtained by him, however.

We think the order of Judge Duffel was absolutely null and void for want of judicial power to act in any case outside of his district. If any such authority exists, we have been unable to find it in the laws of Louisiana.

But if he had authority, his order has not the effect of a judgment between the parties, having been made without citation in a cause never put at issue, and in which there has been no final judgment.

Freeman on Judgments, Sec. 251.

*Webb vs. Buckellew*, 82 N. Y. 555.

A similar order to the one in question was issued by Judge Baxter in the case of *Freeman vs. Dawson*, 110 U. S. 264. An execution had been issued and a levy of land made under it by the marshal, when the circuit judge directed its recall. The order was made in vacation, out of court, and without notice to the judgment creditors, and this court declared it to be irregular, unauthorized and of no legal validity.

Disobedience to an *ex parte* order may subject an officer to punishment for a contempt, but the order itself can not be pleaded in any other proceeding as a judgment binding on any one.

If the sheriff followed the law in the execution of the writ, as in this case, the sale should not be set aside, because he refused to obey an order directing him to proceed in a contrary manner.

As to the objection to the sale, that there was no appraisement, it is sufficient to say that the parties to the mortgage

waived appraisement in the act. And this, it has been frequently decided, may be validly done by the mortgagor.

*Broadwell vs. Rodriguez*, 18 La. An. 68.
*Jouet vs. Mortimer*, 29 La. An. 206.
*Soniat vs. Mills*, 32 La. An. 165.

On account of these irregularities it is averred in the bill that "the sale did not realize a fair value, and that persons who 'would have bid * * did not attend, and were prevented "from bidding."

No suggestion is made that the property was, or now is, worth more than the mortgage debt, nor does the complainant offer to pay the debt if the court shall declare the mortgage to be valid, but shall decree the sale to be void.

Nor does the bill show injury to plaintiff, resulting from the irregularities complained of, for we take it, that the statement above quoted is merely opinion, and not an issuable fact.

Moreover, it is difficult to see how legal injury could result from the act of the sheriff in selling according to law.

To warrant the rescission of a sale in Louisiana for mere omissions and irregularities it must appear that the debtor has been injured by them.

*Copeland vs. Labutut*, 6 La. An. 61.
*Carron vs. Millaudon*, 3 La. An. 665.
*Seawell vs. Payne*, 5 La. An. 255.
*Burnett vs. Emerson*, 8 La. An. 503.
*Mullen vs. Harding*, 12 La. An. 271.

But even the vague and general averment that the property did not bring a fair value is unsupported by a word of proof.

The Godberry brothers have never complained that the sale was irregular or unfair. In fact, they are not parties to this suit, although the proceedings in which the sale was made was carried on against them alone, Stockmeyer not being a necessary party thereto.

This presents the question whether there is not such a defect of parties as to preclude the court from proceeding with the cause.

As a general rule, all the parties to a contract, judgment or sale, sought to be annulled, must join in the suit as plaintiffs, or be brought in as defendants. Their presence is essential to the passing of a decree.

How can this Court annul the mortgage granted by George and Henry Godberry to McCan, or the sale under the foreclosure proceedings against them, in the absence of those parties? That their interests would be affected if the mortgage and sale are annulled, is perfectly clear. Where this is the case, the objection of want of proper parties will be sustained here, although not made in the Circuit Court.

*Mechanics' Bank vs. Seaton*, 1 Peters 299.

*Story vs. Rivingston*, 13 Peters 359.

The judgment appealed from should be affirmed, and we so pray.

Respectfully submitted,

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WM. GRANT,
*Attorneys for Appellees.*

*New Orleans, January 2, 1891.*